

IN THE SUPREME COURT OF FLORIDA

Case No. SC2025-1325

In re: Petition for All Writs Relief Under Article V, § 3(b)(8), Florida
Constitution

Petitioner: Mario Mirabal

AMENDED PETITION FOR ALL WRITS RELIEF

Filed Pursuant to Article V, § 3(b)(8), Florida Constitution, and Fla. R. App.
P. 9.100

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I. INTRODUCTION

Petitioner, Mario Mirabal, pro se, respectfully petitions this Court for extraordinary relief under Article V, § 3(b)(8) of the Florida Constitution. Petitioner has been deprived of any meaningful remedy in the lower courts, as the trial court continues to act despite disqualification, federal divestiture of jurisdiction, and pending appeals, while the Third District Court of Appeal has repeatedly denied or dismissed Petitioner's filings without written opinion. This Court's "all writs" power is necessary to protect its jurisdiction, to prevent irreparable harm, and to ensure the appearance of impartial justice.

II. JURISDICTION

Article V, § 3(b)(8) of the Florida Constitution empowers this Court to issue "all writs necessary to the complete exercise of its jurisdiction." Where a District Court of Appeal issues only summary denials and leaves a litigant without meaningful remedy, this Court may intervene to prevent injustice.

III. STATEMENT OF THE CASE AND FACTS

Petitioner is the Defendant in a foreclosure-derivative action, KP Investments Miami, LLC v. Mirabal, Case No. 2024-022769-CA-01, pending in the Eleventh Judicial Circuit.

In July 2025, Petitioner filed a motion to disqualify Chief Judge Orshan, which was deemed granted by operation of law under Rule 2.330. Despite

this, Judge Orshan signed an order denying Petitioner's Motion to Stay/Abate.

On August 26, 2025, Petitioner filed an Emergency Motion to Disqualify Judges Orshan and Simon, documenting bias, docket manipulation, and federal divestiture. On August 29, 2025, Judge Simon denied the disqualification motion.

Petitioner has also filed notices of federal jurisdiction (April 2025) and pending fraud appeals under Rule 60(d)(3) in the Eleventh Circuit (May 2025), showing that state jurisdiction was divested and higher courts are seized of the matter.

Despite these filings, the trial court continues to act, setting hearings and entertaining contempt motions, most recently issuing sanctions orders and deposition commands while divestiture and disqualification remain unresolved.

IV. APPELLATE HISTORY

Petitioner has repeatedly sought relief from the Third District Court of Appeal, including writs of prohibition, mandamus, and motions for reconsideration. Each filing was denied without opinion. See Exhibit 2.

On August 28, 2025, Petitioner's motion for rehearing en banc and for a written opinion was likewise denied without opinion. See Exhibit 3.

These summary denials deprive Petitioner of any meaningful remedy and

leave no explanation or precedent for review.

V. GROUNDS FOR RELIEF

A. Void Orders by Disqualified Judges

Chief Judge Orshan, already disqualified by deemed grant, signed orders after recusal, rendering them void. Judge Simon improperly ratified those orders and denied disqualification, compounding structural bias.

B. Denial of Due Process

Florida and federal constitutions require a neutral tribunal. Actions by disqualified judges, coupled with the denial of meaningful review, violate due process.

C. Failure of the DCA to Provide Remedy

The Third DCA's repeated denials without opinion leave Petitioner without an adequate state remedy, triggering this Court's "all writs" jurisdiction.

D. Federal Supremacy

Jurisdiction was divested upon notice of federal removal (28 U.S.C. § 1446(d)) and multiple fraud appeals are pending in the Eleventh Circuit. Continuing state action undermines federal supremacy.

VI. NEW POST-PETITION ACTIONS AND SANCTIONS ORDERS

On August 29, 2025, Petitioner filed a Motion to Disqualify Judge Ariana Fajardo Simon pursuant to Florida Rule of General Practice and Judicial Administration 2.330 (D.E. 105). No ruling has been issued.

Despite this, on September 4, 2025, Judge Simon entered an Order Granting Sanctions, compelling an in-person deposition, reserving the right to strike pleadings, and threatening default. See Exhibit 10.

This Order was entered:

After federal removal (April 28, 2025, D.E. 44)

While disqualification remains pending

In conflict with active Eleventh Circuit appeals and sealed federal filings

VII. EVIDENCE OF FRAUD AND FEDERAL OVERSIGHT

Plaintiff's core litigation posture relies on a 2010 assignment executed post-IndyMac Bank receivership, which violated the PSA governing the IndyMac INDX Mortgage Loan Trust 2007-AR5. See Exhibit 8.

Petitioner has filed a consolidated Rule 60(d)(3) motion in the Eleventh Circuit outlining systemic assignment fraud, docket manipulation, and concealment of defects in title — not only affecting this case, but demonstrating structural issues in Florida’s handling of foreclosure and ejectment litigation. See Exhibit 7.

VIII-A. POST-PETITION ESCALATION AND RETALIATORY LITIGATION

Since the filing of this petition and its supplements, events have continued to unfold in direct contradiction to the jurisdictional and ethical limits already raised before this Court.

On September 4, 2025, Judge Simon issued a sanctions order now actively enforced, despite her ongoing disqualification and the pendency of this petition. See Exhibit 10.

Petitioner subsequently filed three federal civil cases in the Southern District of New York — including a RICO suit, a § 1983 action for civil rights violations, and a federal collateral attack on the underlying void judgment. All name Judge Orshan, Judge Simon in their judicial capacity; and Plaintiff’s counsels and firms as defendants. See Exhibit 11.

Despite this, Plaintiff’s counsel has proceeded to file a motion to declare Petitioner a vexatious litigant and demand a security bond — a retaliatory motion filed while jurisdiction is contested and federal protection is pending. See Exhibit 12.

Petitioner has responded in full, objecting to the motion and requesting

judicial clarity.

VIII-B. DISQUALIFICATION OF PLAINTIFF'S COUNSEL AND IMPROPER FILINGS THEREAFTER

Plaintiff's counsel, John Cunill, Esq., and his law firm, the Law Offices of Adorno & Cunill, have been formally disqualified as attorneys in this action by virtue of being named defendants in three pending federal cases now active in the Southern District of New York:

1:25-cv-07419 (RICO)

1:25-cv-07418 (§ 1983)

1:25-cv-07423 (Federal Collateral Attack)

Both Mr. Cunill and his firm were personally served with notice of their disqualification and conflict on or before September 9, 2025. Despite this, Mr. Cunill has continued to:

File a Motion to Declare Defendant a Vexatious Litigant and Request for
Security Bond

Communicate with the Court as if his standing remains intact

Attempt to schedule hearings and compel depositions

NEW DEVELOPMENT: HEARING SET BY TRIAL COURT

On September 15, 2025, while the instant writ remains pending, Judge Lourdes Simon of the 11th Judicial Circuit set a hearing in Case No. 2024-022769-CA-01 on Plaintiff's Motion to Declare Defendant a Vexatious Litigant and Request for Security Bond.

That hearing is scheduled for October 14, 2025, at 9:30 a.m. via Zoom, and was scheduled at the request of Plaintiff's counsel John Cunill, who is simultaneously a named defendant in the SDNY litigation.

The trial court's decision to set a hearing under these circumstances highlights the urgent need for this Court's intervention.

Proceeding with hearings while:

This writ is pending;

Federal cases naming Plaintiff and counsel as defendants are active; and

Disqualification conflicts remain unresolved

this raises substantial risk of inconsistent rulings, irreparable prejudice, and

further erosion of judicial integrity.

These actions violate the rules of professional conduct, ignore the Court's jurisdictional obligations, and constitute ongoing retaliation against a federal whistleblower under seal and constitutional protection.

IX. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

Accept jurisdiction under Article V, § 3(b)(8)

Issue an order to the Eleventh Judicial Circuit, directing that all proceedings in Case No. 2024-022769-CA-01 be stayed pending resolution of federal proceedings and disqualification issues

Vacate or prohibit enforcement of orders entered by disqualified judges

Acknowledge jurisdictional and due process violations now documented in the record

Grant such other and further relief as this Court deems just and proper

Dated: September 12, 2025

Respectfully submitted,

Mario Mirabal

Pro Se Plaintiff

563 W 49 ST

MIAMI BEACH FL, 33140

SOLPHAX@GMAIL.COM

X. EXHIBIT INDEX

- A Emergency Motion to Vacate and Strike Void Orders (Eleventh Judicial Circuit, Aug/Sept 2025)
- B Compilation of Third DCA Summary Denials and Dismissals
- C August 28, 2025 Order Denying Rehearing and Written Opinion
- D Emergency Petition for Writ of Prohibition or Certiorari
- E Plaintiff's Response in Opposition to Defendant's Motion to Vacate
- F Defendant's Emergency Reply in Further Support of Motion to Vacate
- G Consolidated Rule 60(d)(3) Motion Filed in Eleventh Circuit
- H Pooling & Servicing Agreement Violation & Inconsistency Index (IndyMac Trust 2007-AR5)
 - I September 4, 2025 Sanctions Order (Simon)
 - J First Page of SDNY Civil Complaints (1:25-cv-07418, -07419, -07423)
- K Plaintiff's Motion to Declare Defendant a Vexatious Litigant and Request Security Bond
- L Defendant's Response in Opposition to Plaintiff's Motion

EXHIBIT 1

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

Case No. 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC, Plaintiff,

v.

MARIO MIRABAL, Defendant.

_____ /

DEFENDANT'S EMERGENCY MOTION TO VACATE AND STRIKE VOID
ORDERS ENTERED BY DISQUALIFIED JUDGE AND IMPROPER DENIAL
OF RECUSAL

I. INTRODUCTION

Defendant, Mario Mirabal, pro se, respectfully moves on an emergency basis to vacate and strike (1) the Order Denying Defendant's Motion to Stay/Abate, improperly signed by disqualified Judge Ariana Fajardo Orshan, (2) the Order Denying Defendant's Emergency Motion to Disqualify both Judge Orshan and Judge Simon, improperly entered by Judge Simon on August 29, 2025, and (3) to confirm that both judges are now deemed recused by operation of law. These orders are void and unconstitutional because they were entered by judges who lacked authority to act, disregarded a deemed grant of disqualification, and proceeded despite federal divestiture and pending appeals.

II. BACKGROUND

On August 20, 2025, Defendant filed a Motion to Stay/Abate for lack of jurisdiction.

That motion was denied not by presiding Judge Simon, but by Judge Orshan, who had already been disqualified. The order (Exhibit A) lacks an ePortal timestamp and appears backdated.

On July 22, 2025, Defendant filed a Notice of Deemed Grant of Disqualification under Rule 2.330, which by operation of law removed Judge Orshan from presiding. Despite this deemed grant, Judge Orshan subsequently signed the Stay/Abate denial order (Exhibit D).

On August 26, 2025, Defendant filed an Emergency Motion to Disqualify Judges Simon and Orshan with Exhibits A–J documenting docket irregularities and bias (Exhibit B).

On August 29, 2025, Judge Simon denied that disqualification motion (Exhibit C), improperly ruling on a motion that encompassed both herself and the Chief Judge, and effectively ratifying Orshan's void order.

On April 28, 2025, Defendant filed a Notice of Federal Jurisdiction (Exhibit E), advising that jurisdiction was divested to federal court as of March 28, 2025 (docket entry no. 44). Despite this notice, orders continued to be entered in violation of 28 U.S.C. § 1446(d).

On May 23, 2025, Defendant filed a Notice of Pending Rule 60(d)(3) Fraud Motions in Six Federal Appeals (docket entry no. 52), confirming that federal

appellate courts are actively considering fraud claims that directly control this case (Exhibit F).

III. LEGAL STANDARD

Fla. R. Jud. Admin. 2.330(f): A judge shall take no further action once a motion to disqualify is filed until resolved; orders entered in violation are voidable.

Peterson v. Asklipious, 833 So.2d 262 (Fla. 4th DCA 2002): Orders entered by a disqualified judge are voidable and must be vacated.

Livingston v. State, 441 So.2d 1083 (Fla. 1983): Judges must be disqualified where impartiality might reasonably be questioned.

Fla. Const. Art. I § 9; U.S. Const. Amend. XIV: Due process requires a neutral tribunal.

28 U.S.C. § 1446(d): State courts lose jurisdiction upon notice of removal; further action is void.

IV. ARGUMENT

Stay/Abate Denial Void (Ex. A). The order was signed by Judge Orshan, who had already been disqualified under Rule 2.330 and by deemed grant (Ex. D). It lacks ePortal timestamp integrity and is void.

Disqualification Denial Void (Ex. C). Judge Simon improperly denied a motion targeting both herself and Orshan, ratifying an order she did not sign, and shielding her superior. This creates structural conflict and is void.

Federal Divestiture and Appeals (Exs. E & F). Jurisdiction was divested to federal court March 28, 2025; multiple fraud appeals are pending. Orders entered after these notices are ultra vires.

Joint Disqualification. Chief Judge Orshan was deemed recused as of July 2025 (Ex. D). Judge Simon was disqualified by operation of law upon Defendant's Aug. 28, 2025 motion (Ex. B), which she improperly denied on Aug. 29 (Ex. C). Both judges should therefore be recognized as deemed recused and barred from further participation.

Structural Bias. Together, these actions demonstrate docket manipulation, disregard of federal supremacy, and denial of due process.

V. RELIEF REQUESTED

Defendant respectfully requests that the Court:

Vacate and strike the Order Denying Defendant's Motion to Stay/Abate (Exhibit A).

Vacate and strike the Order Denying Defendant's Motion to Disqualify Judges Simon and Orshan (Exhibit C).

Confirm that Chief Judge Orshan was deemed recused as of July 2025 and Judge Simon was disqualified by operation of law as of August 28, 2025, such that both are barred from further action in this case.

Recognize that jurisdiction has been divested to federal court (Exhibit E) and fraud motions are pending in six federal appeals (Exhibit F).

Enter a stay of all proceedings pending resolution of Defendant's federal appeals and Rule 1.540(d) motions before Judge Enriquez.

Grant such further relief as the Court deems just.

EXHIBIT INDEX

Exhibit A: Order Denying Motion to Stay/Abate (signed by disqualified Judge Orshan, no ePortal timestamp).

Exhibit B: Defendant's Emergency Motion to Disqualify Judges Simon and Orshan (filed Aug. 26, 2025, with Exhibits A–J).

Exhibit C: Judge Simon's Order Denying Disqualification (Aug. 29, 2025).

Exhibit D: Defendant's Notice of Deemed Grant of Disqualification (July 2025).

Exhibit E: Defendant's Notice of Federal Jurisdiction (April 2025).

Exhibit F: Defendant's Notice of Pending Rule 60(d)(3) Fraud Motions in Six Federal Appeals (May 23, 2025).

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: 786-479-6596

Email: solphax@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Motion to Vacate and Strike Void Orders was filed via the Florida Courts E-Filing Portal on this 1st day of September, 2025, which shall serve all counsel of record. Courtesy copies were transmitted to chambers with all parties copied.

Counsel for Plaintiff KP Investments Miami, LLC

John Cunill, Esq. – john@cunill.com

Courtesy Copy to Chambers (with all parties copied):

Hon. Ariana Fajardo Simon – chambers email per court protocol

Hon. Ariana Fajardo Orshan – chambers email per court protocol

/s/ Mario Mirabal

Mario Mirabal, Pro Se

EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

VS.

Mario Mirabal

Defendant(s)

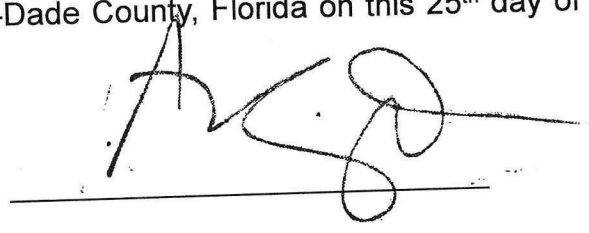
FILED FOR RECORD
2025 AUG 26 PM 4:01
11TH CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
CIVIL #75

PROPOSED ORDER

THIS CAUSE came before the Court on Defendant's Notice of Lack of Jurisdiction and Motion to Stay/Abate Proceedings (Filed via ePortal on 8.20.20225). Upon review and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 25th day of August, 2025.


2024-022769-CA-01
Hon. Ariana Fajardo Orshan
CIRCUIT COURT JUDGE

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and
correct copy of the original on file in this
office August 28 AD 20 25

Juan Fernandez-Barquin, Esq.
Clerk of the Court and Comptroller
Deputy Clerk 

33985052



EXHIBIT B

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
Case No.: 2024-022769-CA-01

KP Investments Miami, LLC, Plaintiff,

v.

Mario Mirabal, Defendant.

_____ /

DEFENDANT'S MOTION TO DISQUALIFY JUDGE SIMON AND
CHIEF JUDGE ORSHAN FOR BIAS AND LACK OF IMPARTIALITY,
AND TO STAY PROCEEDINGS PENDING RESOLUTION OF APPEALS
AND RULE 1.540(d) MOTIONS

I. INTRODUCTION

Defendant, Mario Mirabal, pro se, respectfully moves for disqualification of

the Honorable Judge Lurdes Simon and the Honorable Judge Ariana Fajardo Orshan, and for a stay of proceedings. This motion is based on Florida Rule of General Practice and Judicial Administration 2.330 (disqualification) and 2.215(b)(4) (assignment/reassignment), as well as constitutional guarantees of due process and impartial tribunal.

II. FACTUAL BACKGROUND

Jurisdiction was divested to federal court as of March 28, 2025 (docket entry no. 44).

Motion Properly Filed, Denial Signed by Wrong Judge. Defendant filed a Motion to Stay/Abate (Ex. A)

The order denying that motion was signed not by Judge Simon but by Chief Judge Orshan, despite her prior recusal, and it lacked the official ePortal timestamp (Ex. B)

Proposed Order Irregularities. The Judicial Assistant deleted Defendant's proposed order while entering Plaintiff's, as confirmed in email correspondence (Ex. C)

Docket Manipulation. Administrative Order 25-06, reassigning the case, was entered out of sequence raising appearance of backdating.(Ex. D)

Draft Orders Circulated by Opposing Counsel. Emails show opposing counsel

(Cunill) circulating a draft Rule to Show Cause (Ex. E),

and a draft sanctions order (Ex. F),

which were then reflected in court transmissions (Ex. G, H),

Proceedings Despite Pending Appeals. Plaintiff has noticed depositions while six appeals and fraud-based 1.540(d) motions remain unresolved.(Ex. I)

III. LEGAL STANDARD

Rule 2.330(f): A motion is legally sufficient if the facts would cause a reasonable person to fear they cannot receive a fair trial.

Rule 2.215(b)(4): The Chief Judge may reassign for good cause — but where the Chief Judge herself is implicated, impartiality requires stepping aside.

Hazel-Atlas Glass Co., 322 U.S. 238 (1944): Fraud upon the court voids orders at any time.

IV. ARGUMENT

A. Disqualification of Judge Simon.

Judge Simon's division deleted Defendant's filings (Ex. C), adopted opposing counsel's drafts (Exs. E-H), and proceeded despite Defendant's constitutional objections. This creates a well-founded fear of bias.

B. Disqualification of Chief Judge Orshan.

Judge Orshan signed an order (Ex. B) despite recusal, controlled reassignment (Ex. D), and remains implicated administratively. A reasonable person would fear partiality.

C. Reassignment Alone Cannot Cure Bias.

Even if the case is reassigned, proceeding while Federal appeals remain open and Enriquez's 1.540(d) fraud motions remain unresolved prejudices issues under higher review. The only fair remedy is a stay.

D. Stay Pending Resolution.

With federal appeals and Judge Enriquez's fraud rulings pending, proceeding here risks inconsistent judgments and violates the Supremacy Clause.

V. RELIEF REQUESTED

Defendant respectfully requests that this Court:

Disqualify Judge Simon pursuant to Rule 2.330.

Disqualify Chief Judge Orshan pursuant to Rule 2.330.

Reassign this case under Rule 2.215(b)(4) to a division not under Chief Judge Orshan's control, with the express direction that proceedings be stayed until jurisdictional questions are resolved.

Stay these proceedings in any event, pending:

Resolution of Defendant's appeals, including docket entry no. 52 (filed May 23, 2025, Notice of Federal Fraud-Based Motion under Review in the Eleventh Circuit under Rule 60(d)(3), Fraud Upon the Court);

Adjudication of Defendant's pending Rule 1.540(d) fraud motions before Judge Enriquez; and

Recognition that jurisdiction was divested to federal court as of March 28, 2025 (docket entry no. 44).

Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: 786-479-6596

Email: solphax@gmail.com

08.28.2025

EXHIBIT INDEX

Exhibit A – Defendant’s Motion to Stay/Abate (time-stamped)

Exhibit B – Certified copy of Order Denying Stay/Abate, signed by Orshan

Exhibit C – JA email thread re proposed orders

Exhibit D – Docket snapshot showing AO 25-06 out of sequence

Exhibit E – Cunill email draft Rule to Show Cause

Exhibit F – Cunill email draft sanctions order

Exhibit G – Service of draft orders (court staff)

Exhibit H – Court Map notification of draft order service

Exhibit I – KP Notice of Taking Deposition

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Motion to Disqualify Judge Simon and Chief Judge Orshan for Bias and Lack of Impartiality, and to Stay Proceedings Pending Resolution of Appeals and Rule 1.540(d) Motions, together with Exhibits A–J, has been filed via the Florida Courts E-Filing Portal on this 28th day of Aug, 2025. The filing has been served via ePortal and or email on the following:

Counsel for KP Investments Miami, LLC:

John Cunill, Esq.

john@cunill.com

(or the email on ePortal)

Judicial Officers (by email to chambers):

Hon. Ariana Fajardo Simon (Civil Division, Miami-Dade)

simon_chambers@jud11.flcourts.org

(or as per court protocol)

Hon. Ariana Fajardo Orshan (Chief Judge, 11th Judicial Circuit)

orshan_chambers@jud11.flcourts.org

(or as per court protocol)

Mario Mirabal, Pro Se

563 w 49 st

Miami Beach Fl 33140

786.479.6596

solphax@gmail.com

EXHIBIT A

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO.: 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL,

Defendant.

DEFENDANT'S NOTICE OF LACK OF JURISDICTION AND MOTION
TO STAY/ABATE PROCEEDINGS PENDING FEDERAL REVIEW
AND PENDING RULE 1.540(d) MOTION

INTRODUCTION AND NOTICE

Defendant, Mario Mirabal, hereby gives notice that this Court presently lacks jurisdiction to proceed, and moves for an order staying and abating these proceedings.

This case was removed to the United States District Court for the Southern District of Florida as Case No. 1:25-cv-20747-JEM. That removal divested the state court of jurisdiction under 28 U.S.C. § 1446(d). Although the District Court entered an order of remand, Defendant timely appealed. Federal appellate review is ongoing in the U.S. Court of Appeals for the Eleventh Circuit as Case Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-11183, and 25-11254. Until those appeals are resolved and mandates issue, jurisdiction remains with the federal courts, and this Court is without authority to act.

Further underscoring this instability, Judge Orshan's prior actions in this case remain under review in the Florida Third District Court of Appeal (Case No. 3D2025-0540). Yet the case has been administratively reassigned to Judge Lourdes Simon without a formal recusal order while Orshan's rulings remain on appeal.

Finally, the Plaintiff's ejectment claims are wholly derivative of the foreclosure judgment at issue in Case No. 2018-018704-CA-01 (Deutsche Bank Nat'l Trust Co. v. Mirabal), where Defendant's Rule 1.540(d) motion remains pending before Judge Enriquez. Defendant further notes that the originating foreclosure action was dismissed with prejudice in 2020, making all derivative actions — including Plaintiff's ejectment claim — inconsistent with that final adjudication. Defendant's pending 1.540(d) motion seeks enforcement of that dismissal order against subsequent void proceedings.

For all of these reasons — federal removal and pending appeals, lack of jurisdiction under the Supremacy Clause, unresolved Rule 1.540(d) proceedings, and appellate review of Judge Orshan's conduct — Defendant respectfully moves this Court to stay and abate all proceedings.

FACTUAL BACKGROUND

This case was removed to the United States District Court for the Southern District of Florida as Case No. 1:25-cv-20747-JEM.

Following remand, Defendant timely appealed. The matter remains under review in the U.S. Court of Appeals for the Eleventh Circuit as Case Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-11183, and 25-11254.

Federal appellate review is ongoing and has not been resolved. These proceedings divest this Court of jurisdiction until final federal disposition.

Independently, in Case No. 2018-018704-CA-01 (Deutsche Bank Nat'l Trust Co. v. Mirabal), Defendant has filed a Rule 1.540(d) motion demonstrating that the foreclosure judgment underlying Plaintiff's title claims is void ab initio.

The foreclosure action was dismissed with prejudice in 2020, making any subsequent enforcement proceedings inconsistent with that final adjudication.

Plaintiff's ejectment claims in this action are entirely derivative of the foreclosure judgment at issue in the Enriquez case. If the 1.540(d) motion is granted, Plaintiff's claims here will be extinguished.

LEGAL BASIS

Supremacy Clause, U.S. Const. Art. VI, cl. 2: State courts are bound to respect the jurisdiction of federal courts once removal has occurred.

28 U.S.C. § 1446(d): Upon removal, state courts are divested of jurisdiction unless and until remand is final and unappealed. Here, multiple appeals are pending.

Florida Rule of Civil Procedure 1.540(d): A void judgment may be attacked at any time; until adjudication, derivative actions cannot lawfully proceed.

INCORPORATION BY REFERENCE

Defendant incorporates by reference the Affidavit of Forensic Facts in Support of Defendant's Rule 1.540(d) Motion, filed July 2025 in Case No. 2018-018704-CA-01, which outlines systemic assignment fraud, SEC (pooling) and REMIC violations, and 83 documented instances of fraud upon the court.

REQUEST FOR RELIEF

WHEREFORE, Defendant respectfully requests that this Court:

- A. Take notice of its lack of jurisdiction while federal appeals remain pending;
- B. Stay and abate all proceedings in this case, including Plaintiff's scheduled Motion for Sanctions on August 28, 2025;
- C. Defer to the pending federal appellate proceedings in the Eleventh Circuit — including Case Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-

11183, and 25-11254 — all of which involve overlapping issues of jurisdiction, fraud upon the court, and collusion between KP Investments Miami, LLC and Deutsche Bank, as well as the pending Rule 1.540(d) proceedings in Case No. 2018-018704-CA-01; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: Aug 20, 2025

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

786-479-6596

solphax@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Notice of Lack of Jurisdiction and Motion to Stay/Abate Proceedings has been filed with the Florida Courts E-Filing Portal this _____ day of August, 2025, and served via electronic mail and/or electronic filing notification on all counsel of record.

Dated: Aug 20, 2025

Miami, Florida

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: (786) 479-6596

Email: solphax@gmail.com

EXHIBIT B

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

VS.

Mario Mirabal

Defendant(s)

FILED FOR RECORD
2025 AUG 26 PM 4:01
11th CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
CIVIL #75

PROPOSED ORDER

THIS CAUSE came before the Court on Defendant's Notice of Lack of Jurisdiction and Motion to Stay/Abate Proceedings (Filed via ePortal on 8.20.20225). Upon review and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 25th day of August, 2025.

2024-022769-CA-01
Hon. Ariana Fajardo Orshan
CIRCUIT COURT JUDGE

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and
correct copy of the original on file in this
office August 28 AD 20 25
Juan Fernandez-Barquin, Esq.
Clerk of the Court and Comptroller
Deputy Clerk Juan Fernandez-Barquin

33985052



EXHIBIT C

Case 2024-022769-CA-01 – Defendant's Motion to Stay/Abate – Proposed Order for Judge Simon (CA02)

Inbox



mario mirabel <solphax@gmail.com>
to earagon, John

Wed, Aug 20, 3:30 AM (8 days ago)

Ms. Aragon Ortega,

Please confirm chambers' receipt of attached Defendant's **Notice of Lack of Jurisdiction and Motion to Stay/Abate** filed via the ePortal on 8.20.2025 in **Case No. 2024-022769-CA-01 (KP Investments Miami, LLC v. Mario Mirabal)**. I am submitting the attached **Proposed Order** (Word format) for Judge Simon's review. Thank you.

Respectfully,

Mario Mirabal

563 W 49th Street, Miami Beach, FL 33140

786-479-6596 | solphax@gmail.com

2 Attachments • Scanned by Gmail



Aragon Ortega, Estefany

to me, John

Wed, Aug 20, 12:21 PM (8 days ago)

Good morning all:

I am in receipt of this email. However, please note Proposed Orders must be submitted via courtMAP for the Court's review.

Best regards,

Estefany N. Aragon Ortega, MPA

Judicial Assistant to Judge Lourdes Simon

Administrative Judge, Circuit Civil Division

Dade County Courthouse, 73 W Flagler St, #635

(305) 349-7152 | earagon@jud11.flcourts.org

From: mario mirabel <solphax@gmail.com>

Sent: Wednesday, August 20, 2025 3:30 AM

To: Aragon Ortega, Estefany <earagon@jud11.flcourts.org>; John Cunill <john@acfirm.com>

Subject: Case 2024-022769-CA-01 – Defendant's Motion to Stay/Abate – Proposed Order for Judge Simon (CA02)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.



John Cunill

to Estefany, me

Wed, Aug 20, 12:25 PM (8 days ago)

Ms. Aragon-Ortega:

Plaintiff objects to this order and the manner in which it is being provided to the court without hearing.

Sent from my mobile device.

John Cunill Esq.

Law Offices of Adorno & Cunill PL

305.381.9999

305.775.4455

www.acfirm.com

john@acfirm.com

1000 Brickell Ave Ste 1100 Miami, FL 33131

From: Aragon Ortega, Estefany <earagon@jud11.flcourts.org>

Sent: Wednesday, August 20, 2025 12:21:27 PM

To: mario mirabel <solphax@gmail.com>; John Cunill <john@acfirm.com>

Subject: RE: Case 2024-022769-CA-01 – Defendant's Motion to Stay/Abate – Proposed Order for Judge Simon (CA02)

...

[Message clipped] [View entire message](#)

EXHIBIT D

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Image	Din	Date	Book/Page	Docket Entry	Event Type	Comments
		11/07/2025		Calendar Call	Hearing	
		08/28/2025		Motion Calendar	Hearing	PLAINTIFF S MOTION FOR SANCTIONS PURSUANT TO FLA. R. CIV. P. 1.380
	76	08/26/2025		Notice:	Event	Non-appearance
	75	08/26/2025		Order:	Event	PROPOSED- DEFENDANT'S MOTION IS DENIED
	74	08/20/2025		Notice:	Event	OF LACK OF JURISDICTION AND MOTION TO STAY/ABATE
				Notice of		August 28, 2025 at

EXHIBIT E

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC, a
Florida Limited Liability Company,

Case No.: 2024-022769-CA-01

Plaintiff,

Vs

Judge.:

MARIO MIRABAL
and all those in possession

Defendant.

RULE TO SHOW CAUSE

THIS CAUSE came before the Court on August 28, 2025, upon Plaintiff's Motion for Sanctions pursuant to Florida Rule of Civil Procedure 1.380. The Court, having reviewed the record, heard argument of counsel, and being otherwise fully advised in the premises, **ORDERS AND ADJUDGES** as follows:

1. Defendant, Mario Mirabal, is hereby **ORDERED TO APPEAR** before this Court on Thursday, September 18, 2025, at 9:00 a.m., in Courtroom 6-1, 73 West Flagler Street, Miami, Florida 33130.
2. At that time and place, Defendant shall personally appear and **SHOW CAUSE** why he should not be held in contempt of court and sanctioned for failing to comply with this Court's prior order compelling his deposition and for failing to attend the deposition as noticed.
3. Plaintiff shall serve this Rule to Show Cause, along with the underlying Motion for Sanctions, upon Defendant in accordance with the Florida Rules of Civil Procedure, and shall file proof of service with the Court.
4. Defendant is hereby advised that failure to appear as ordered may result in sanctions, including but not limited to attorney's fees, striking of pleadings, entry of default, or other remedies authorized by law, without further notice.

DONE AND ORDERED, in chambers, at _____, _____ County, this _____ day of _____, _____.

HON. CIRCUIT JUDGE

Draft

EXHIBIT F

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC, a
Florida Limited Liability Company,

Case No.: 2024-022769-CA-01

Plaintiff,

Vs

Judge.: Ariana Fajardo Oshan

MARIO MIRABAL
and all those in possession

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS

THIS CAUSE came before the Court on August 28, 2025, on Plaintiff's Motion for Sanctions pursuant to Fla. R. Civ. P. 1.380 [D.E. 69] ("Motion") Plaintiff was represented by counsel, John Cunill, Esq. The Defendant, Mario Mirabal, refused to appear, despite being notified of the hearing. The Court, having reviewed the Motion, the record, and being otherwise fully advised in the premises, finds as follows:

1. On June 18, 2025, this Court entered an Order compelling Defendant, Mario Mirabal, to appear for deposition on July 22, 2025, at 10:00 A.M. at the Law Offices of Adorno & Cunill, PL, 1000 Brickell Avenue, Suite 1100, Miami, Florida 33131.
2. Defendant failed to appear at his court ordered deposition.
3. A Certificate of Non-Appearance was issued by the court reporter confirming Defendant's failure to attend.
4. Defendant's failure to appear constitutes a willful violation of this Court's June 18, 2025, Order and is sanctionable under Fla. R. Civ. P. 1.380(d).

Accordingly, it is **ORDERED AND ADJUDGED**:

A. Plaintiff's Motion for Sanctions is GRANTED.

B. Defendant is Ordered to appear in-person for deposition at the Law Offices of Adorno & Cunill, PL, 1000 Brickell Avenue, Suite 1100, Miami, Florida 33131, on September 10, 2025, at 10:00 A.M.

C. Defendant is expressly cautioned that failure to comply with this Order may result in escalating sanctions, including striking of pleadings and entry of default judgment pursuant to Fla. R. Civ. P. 1.380.

D. The Court reserves on monetary sanctions and further sanctions.

DONE AND ORDERED, in chambers, at _____, _____ County, this _____ day of _____, _____.

HON. CIRCUIT JUDGE

EXHIBIT G

Service of Court Documents

Inbox

**John Cunill**

to me, Amarilis, Law



10:50 AM (2 hours ago)

Filer: John Cunill 305-381-9999
Court: Eleventh Judicial Circuit in and for Miami-Dade County, Florida
Case #: 132024CA02276901GE01
Court Case #: 2024-022769-CA-01
Case Style: KP INVESTMENTS MIAMI, LLC a Florida LLC vs Mario Mirabal
Documents: 1. Proposed order on Motion for Sanctions
2. Proposed Order to Show Cause.

John Cunill, Esq.**Law Offices of Adorno & Cunill PL**

1000 Brickell Avenue, Suite 1100

Miami, Florida 33131

Phone: 305-381-9999**Fax:** 305-381-9898**Cell:** 305-775-4455**Web:** www.acfirm.com

Champion Badge

Gold

NOTICE: The information in this e-mail is confidential and may contain information that is attorney-client privileged or otherwise exempt from disclosure. It is intended only for the use of the individual(s) or entity(ies) to whom it is addressed. If you are not an intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete the entire message (and any attachments) from their computer. Nothing contained in this disclosure notice shall be deemed to create an attorney-client relationship between sender and recipient where such a relationship does not otherwise exist. Thank you.

Este mensaje electrónico y cualquier archivo que se adjunte contiene información legalmente privilegiada y confidencial. Es para uso exclusivo del destinatario. Si usted ha recibido esta comunicación por error, por favor avísenos inmediatamente. Gracias.

EXHIBIT H

Service of Draft Court Document: 2024-022769-CA-01

Inbox



cmap-noreply@jud11.flcourts.org

to

10:22 AM (2 hours ago)

Service of Draft Court Document

Case Number: 2024-022769-CA-01
Case Style: KP INVESTMENTS MIAMI, LLC a Florida LLC vs Mario Mirabal
Section: CA02
Court Order: Order On Motion To Compel
Title: ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS
Status: Pending

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cmap-noreply@jud11.flcourts.org

to

10:45 AM (2 hours ago)

Service of Draft Court Document

Case Number: 2024-022769-CA-01
Case Style: KP INVESTMENTS MIAMI, LLC a Florida LLC vs Mario Mirabal
Section: CA02
Court Order: Order To Show Cause
Title: Order To Show Cause
Status: Pending

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EXHIBIT I

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC,
Plaintiff,

CASE NO.: 2024-022769-CA-01

SECTION: CA32

v.

MARIO MIRABAL,
Defendant.

_____ /

NOTICE OF DEPOSITION ON ORAL EXAMINATION
TO BE TAKEN IN PERSON

Please take notice that, pursuant to Rule 1.310 of the Florida Rules of Civil Procedure, Plaintiff, KP Investments Miami, LLC, will take the oral deposition of Defendant, Mario Mirabal, beginning on September 10, 2025 at 10:00 a.m., and continuing thereafter from day to day, excluding Sundays and holidays, until completed, at the Law Offices of Adorno & Cunill P.L. at 1000 Brickell Avenue, Suite 1100, Miami, FL 33131. The deposition will be taken in person, by Veritext Legal Solutions.

Any minor subpoenaed for testimony has the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of a parent or guardian are in actual or potential conflict with the interests of the minor.

NOTICE TO PERSONS WITH DISABILITIES
Americans with Disabilities Act (ADA)

If you qualify under the Americans with Disabilities Act (ADA) and need assistance, please visit the Eleventh Judicial Circuit of Florida or you may contact the ADA Coordinator at: E-mail: ADA Coordinator at ADA@jud11.flcourts.org; Voice Mail #: 305-349-7175; TDD #: 305-349-7174; Fax #: 305-349-7355. If you are hearing or voice impaired, please call 711 or 1-800-955-8771 for the Florida Relay Service.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August 2025, a true and correct copy was served to the Defendant, Mario Mirabal, by e-filing in accordance with the Florida Rules of Judicial Administration. Additionally, a copy was sent via email to the Defendant's email address at: solphax@gmail.com.

/s/ John Cunill

John Cunill

Attorney for Plaintiff

Florida Bar Number: 101733

Law Offices of Adorno & Cunill, PL

1000 Brickell Ave. Ste. 1100

Miami, FL 33131

Telephone: (305) 381-9999

Fax: (305) 381-9898

E-Mail: john@acfirm.com

EXHIBIT C

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

**ORDER DENYING MOTION TO DEEM DISQUALIFICATION GRANTED AND
REQUEST FOR STAY**

THIS CAUSE came before the Court on Defendant, Mario Mirabal's "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS," which was filed on July 22, 2025.

Rule 2.330(d) requires that a motion to disqualify be served "no later than 30 days after the service of the motion as set forth in subdivision (d)." The motion for disqualification in this case was filed on June 22, 2025, but was not served on the undersigned as required by Rule 2.330(d). When there is a lack of proper service on the Judge, the 30-day deadline does not begin to run until the Judge actually receives the motion. *See Baker v. State*, 230 So. 3d 173, 174 (Fla. 1st DCA 2017); *Leila Corp. of St. Pete v. Ossi Consulting Engineers, Inc.*, 144 So. 3d 644, 646-47 (Fla. 2d DCA 2014). In this case, the motion was actually received by the undersigned on July 23, 2024, less than 30 days ago.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

The "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS" is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 31st day of July, 2025.



2024-022769-CA-01 07-31-2025 10:31 AM

Hon. Ariana Fajardo Orshan

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

EXHIBIT D

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA – CIVIL DIVISION
CASE NO.: 2024-022769-CA-01
SECTION: CA 03
(Hon. Ariana Fajardo Orshan – recused)

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL (Ariana Birencwajg),

Defendants.

/

NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND
REQUEST FOR STAY PENDING FEDERAL AND RELATED
PROCEEDINGS

TO: The Honorable Nushin G. Sayfie, Chief Judge

Eleventh Judicial Circuit, Miami-Dade County, Florida

Defendant, Mario Mirabal, appearing pro se and as Attorney-in-Fact for co-Defendant Ariana Birencwajg, respectfully submits this Notice of Deemed Grant of Disqualification pursuant to Florida Rule of General Practice and Judicial Administration 2.160(f), and requests that all further proceedings in this matter be stayed pending resolution of jurisdictional matters now before the United States District Court, the Eleventh Circuit Court of Appeals, and the Hon. Javier Enriquez in Case No. 2018-018704-CA-01.

I. DISQUALIFICATION DEEMED GRANTED UNDER RULE 2.160(f)

On June 22, 2025, Defendant filed and served a Verified Motion to Disqualify the Honorable Judge Ariana Fajardo Orshan, pursuant to Florida Rule of Judicial Administration 2.160.

As of the date of this Notice, more than 30 days have passed without a ruling on that motion. Under Rule 2.160(f), where a judge has not entered an order granting or denying the motion within 30 days of service:

“The motion shall be deemed granted, and the moving party may seek an order from the chief judge.”

Accordingly, disqualification is now self-executing as a matter of law, and this Court is formally notified that the case must be reassigned.

II. REQUEST FOR STAY PENDING RELATED ACTIONS

In light of the now-granted disqualification, Defendant respectfully requests that the Chief Judge exercise her inherent administrative authority to:

Issue an administrative stay of all proceedings in this matter, including but not limited to:

Depositions;

Hearings or trial dates;

Motions to compel, sanction, or for summary judgment;

Maintain such stay pending outcome of:

Defendant's Rule 1.540(d) motion in Case No. 2018-018704-CA-01, which seeks to reinstate a 2020 final dismissal with prejudice that extinguishes the title interest asserted in this ejectment case;

Multiple pending federal appeals before the U.S. Court of Appeals for the Eleventh Circuit, involving overlapping parties, evidence, and property interests, as well as Rule 60(d)(3) filings and sealed submissions under the False Claims Act.

III. GROUNDS FOR STAY

This case is entangled with matters of federal jurisdiction, due process violations, fraudulent title conveyance, and state-federal conflict. Continued litigation at the trial level risks prejudicing ongoing federal review and final adjudication in:

Appeals already pending before the Eleventh Circuit;

Sealed federal proceedings involving Deutsche Bank and its assigns;

The state foreclosure case that forms the basis for Plaintiff's ejectment claim.

Failure to stay these proceedings risks irreparable procedural harm and institutional conflict between court rulings.

IV. PRAYER FOR RELIEF

Defendant respectfully requests:

That the Hon. Nushin G. Sayfie recognize that disqualification has been deemed granted under Rule 2.160(f);

That this case be reassigned accordingly;

That all proceedings in this matter be administratively stayed pending final adjudication of:

The pending Rule 1.540(d) motion in Case No. 2018-018704-CA-01;

All active Eleventh Circuit appeals and associated federal filings concerning

the same property.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal (pro se)

Attorney-in-Fact for Ariana Birencwajg

563 W. 49th Street, Miami Beach, FL 33140

solphax@gmail.com | (786) 479-6596

Dated: July 22, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 22nd day of July, 2025, to:

John Cunill, Esq.

Counsel for Plaintiff

EXHIBIT 2

IN THE DISTRICT COURT OF
APPEAL

OF FLORIDA

THIRD DISTRICT

August 7, 2025

Mario Mirabal,

3D2025-1487

Petitioner(s),

Trial Court Case No. 24-22769-CA-01

v.

KP Investments Miami, LLC,

Respondent(s).

Upon consideration of the pro se Emergency Petition for Writ of Prohibition or, Alternatively, Petition for Writ of Certiorari, filed on August 6, 2025, it is ordered that said Petition is hereby denied.

FERNANDEZ, LOBREE and GOODEN, JJ., concur.

A True Copy
ATTEST

3D2025-1487 8/7/25 *Prieto*
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



CC: John Cunill
Hon. Ariana Fajardo Orshan
Patricia Lynn Gladson
Mario Mirabal

NS

EXHIBIT 3

IN THE DISTRICT COURT OF
APPEAL

OF FLORIDA

THIRD DISTRICT

August 28, 2025

Mario Mirabal,

3D2025-1487

Petitioner(s),

Trial Court Case No. 24-22769-CA-01

v.

KP Investments Miami, LLC,

Respondent(s).

Upon consideration, pro se Petitioner's Motion for Rehearing En Banc is treated as having included a motion for rehearing. The motion for rehearing is hereby denied.

Upon consideration, pro se Petitioner's Request for Written Opinion is hereby denied.

FERNANDEZ, LOBREE and GOODEN, JJ., concur.

Pro se Petitioner's Motion for Rehearing En Banc is, likewise, denied.

A True Copy
ATTEST

3D2025-1487 8/28/25] *Prieto*
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



CC: John Cunill
Hon. Ariana Fajardo Orshan
Patricia Lynn Gladson
Mario Mirabal

NS

EXHIBIT 4

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 2025-1487

Lower Tribunal Case No.: 2024-022769-CA-01

Division: CA31

MARIO MIRABAL,

Petitioner,

v.

THE HONORABLE ARIANA FAJARDO ORSHAN,

Respondent Circuit Judge for the Eleventh Judicial Circuit,

and

KP INVESTMENTS MIAMI, LLC,

Real Party in Interest.

_____/

EMERGENCY PETITION FOR WRIT OF PROHIBITION
OR, ALTERNATIVELY, PETITION FOR WRIT OF CERTIORARI
TO ENFORCE DEEMED GRANT OF JUDICIAL DISQUALIFICATION
AND TO HALT FURTHER ACTION BY DISQUALIFIED JUDGE

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

Petitioner, Mario Mirabal, pro se, respectfully files this Emergency Petition for Writ of Prohibition, or alternatively a Petition for Writ of Certiorari, seeking relief from unlawful judicial action taken by the Honorable Ariana Fajardo Orshan in violation of Florida Rule of General Practice and Judicial Administration 2.330(j).

Judge Orshan failed to enter an order on a properly filed and served Verified Motion for Disqualification within the mandatory 30-day period. As a matter of law, disqualification was deemed granted on July 22, 2025. Nevertheless, on July 30, 2025, Judge Orshan entered an order denying the disqualification motion — a ruling without jurisdiction, and in direct conflict with binding Florida authority.

Petitioner seeks:

(a) an immediate writ prohibiting further judicial action by Judge Orshan in Case No. 2024-022769-CA-01;

(b) vacatur of the July 30 order as void;

(c) reassignment to a neutral judge; and

(d) any other relief this Court deems just.

II. JURISDICTION

This Court has jurisdiction to issue writs of prohibition and certiorari pursuant to Article V, § 4(b)(3) of the Florida Constitution and Florida Rules of Appellate Procedure 9.030(b)(3) and 9.100.

A writ of prohibition is appropriate to restrain a lower court from acting without jurisdiction, including after disqualification is deemed granted by rule.

III. STATEMENT OF THE CASE AND FACTS

On June 22, 2025, Petitioner filed a Verified Motion to Disqualify Judge Orshan under Rule 2.330 of the Florida Rules of General Practice and Judicial Administration, citing substantial grounds for judicial bias, prior conduct, and conflicts related to sealed federal filings and retaliatory enforcement actions.

The motion was docketed, assigned a filing number, and properly served through the Florida Courts E-Filing Portal.

Pursuant to Rule 2.330(j):

“If the motion is not denied within 30 days of service, it shall be deemed granted and the judge shall immediately take no further action in the case.”

No order was entered by July 22, 2025 — the 30th day. Petitioner then filed a Notice of Deemed Granted Disqualification, and submitted notice to chambers.

On July 30, 2025, Judge Orshan entered an Order Denying Motion to Disqualify, asserting for the first time that she had not become “aware” of the motion until July 23 — the day after the disqualification was triggered by rule.

The order was entered after the 30-day deadline, in violation of the plain text of Rule 2.330(j), and is therefore null and void.

IV. ARGUMENT

A. Rule 2.330(j) is Mandatory and Self-Executing

Florida courts have long held that:

“The 30-day limit is mandatory. Once the period expires without an order, the motion is deemed granted, and the judge is without jurisdiction to act further.”

— Nunez v. Backman, 645 So. 2d 1063 (Fla. 3d DCA 1994);

— Barwick v. State, 660 So. 2d 685, 692 (Fla. 1995)

The judge’s subjective “awareness” is irrelevant. Service via the e-Filing Portal is effective, and Rule 2.330 imposes no requirement for separate email or in-person notice.

B. Orshan’s July 30 Order is Void for Lack of Jurisdiction

Once the 30-day window closed on July 22, 2025, Judge Orshan was jurisdictionally barred from entering any further order.

Her July 30 ruling is:

Void ab initio;

A violation of due process;

Grounds for immediate prohibition.

C. Extraordinary Relief is Warranted

Petitioner faces imminent harm from judicial action taken by a disqualified judge. A pending motion for sanctions by KP Investments — the very party whose filings formed part of the disqualification motion — remains live, risking irreparable reputational and financial damage.

This Court must intervene to preserve the rule of law, and to prohibit further judicial acts by a judge who has been legally removed by operation of rule.

V. EXHIBITS AND APPENDIX REFERENCE

The following supporting documents are included in the separately filed Appendix, in compliance with Florida Rule of Appellate Procedure 9.220:

Exhibit A: Verified Motion to Disqualify Judge Orshan (Filed June 22, 2025)

Exhibit B: Notice of Deemed Grant of Disqualification (Filed July 22, 2025)

Exhibit C: Email Thread with JA for Chief Judge Sayfie (July 22–23, 2025)

Exhibit D: Order Denying Motion to Disqualify (Entered July 30, 2025)

Exhibit E: RULE 2.330. DISQUALIFICATION OF TRIAL JUDGES
(Florida Rules of General Practice and Judicial Administration
<https://www.flcourts.gov/content/download/217909/file/Florida-Rules-of-Judicial-Administration.pdf>)

VI. CLARIFICATION REGARDING RULE 2.330 INTERPRETATION AND TRIGGERING OF DEEMED GRANT

Respondent Judge Orshan’s July 30 order attempts to deny Petitioner’s motion to disqualify by asserting she was not “aware” of the motion until July 23, 2025, and therefore that the 30-day clock had not begun.

A. THE JUDGE’S INTERPRETATION OF RULE 2.330 IS CONTRARY TO THE RULE’S TEXT

Judge Orshan’s July 30 Order asserts that because she was not “aware” of the disqualification motion until July 23, 2025, the 30-day deadline under Rule 2.330(j) had not begun to run. That interpretation is unsupported by the rule and directly conflicts with its mandatory timing requirements.

B. SERVICE WAS COMPLETED UNDER RULE 2.516

Petitioner’s Verified Motion to Disqualify was:

Filed via the Florida Courts E-Filing Portal on June 22, 2025;

Served through the portal upon all parties, including the trial court;

Docketed and recorded, demonstrating proper transmission.

Under Rule 2.516(b)(1), service via the portal is effective when transmitted unless returned as undeliverable. The judge's subjective awareness is not a requirement to trigger Rule 2.330(j).

C. THE 30-DAY DEADLINE IS MANDATORY

Florida Rule 2.330(j) states:

“If the motion is not denied within 30 days of service, it shall be deemed granted, and the judge shall immediately take no further action in the case.”

This rule is clear and unambiguous. The judge's failure to act within 30 days from June 22, 2025—the date of portal service—resulted in automatic disqualification on July 22, 2025.

As the Florida Supreme Court and this Court have long held:

“The 30-day limit is mandatory.”

— Barwick v. State, 660 So. 2d 685, 692 (Fla. 1995)

“Once the period expires without an order, the motion is deemed granted.”

— Nunez v. Backman, 645 So. 2d 1063 (Fla. 3d DCA 1994)

D. FULL TEXT OF RULE 2.330 ATTACHED

To aid the Court’s review, Petitioner attaches the full text of Rule 2.330 (as updated October 31, 2024), including subsections (d), (j), and (l), which collectively confirm:

That service via the ePortal is legally sufficient;

That 30 days is measured from date of service, not judicial “awareness”;

That if no ruling is issued, disqualification is automatic and irrevocable.

VII. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

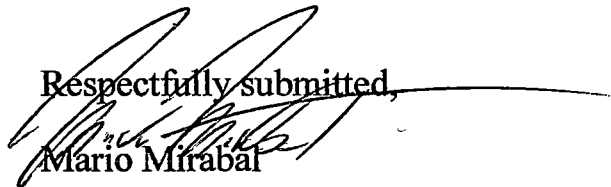
Issue a writ of prohibition prohibiting Judge Ariana Fajardo Orshan from taking any further action in Case No. 2024-022769-CA-01;

Vacate the July 30 and July 31, 2025 orders as void and entered without jurisdiction;

Order reassignment of the case to a neutral judge;

Stay all proceedings in the underlying case pending this Court's review; and

Grant any other relief deemed just and proper.

Respectfully submitted,

Mario Mirabal

Pro Se Petitioner

563 W 49th Street

Miami Beach, FL 33140

solphax@gmail.com

786-479-6596

Dated: Aug 4, 2025

**APPENDIX – PROCEDURAL BACKGROUND OF VERIFIED
DISQUALIFICATION MOTION (Filed June 22, 2025)**

Petitioner respectfully submits the following background to inform the Court of the context in which the Verified Motion to Disqualify Judge Ariana Fajardo Orshan was filed. This section is not intended as a basis for relief in this proceeding but is offered solely to clarify the nature of the judicial conduct that prompted the disqualification motion and the prejudice that has followed.

1. Underlying Case: Derivative of a Derivative of a Foreclosure Action

The case before Judge Orshan (Case No. 2024-022769-CA-01) is an

ejectment action brought by KP Investments Miami, LLC. This case is derivative of a specific performance suit (2022-004706-CA-01) with a still un-adjudicated 1.540(b) for fraud, which in turn relies entirely on a foreclosure judgment entered in Case No. 2018-018704-CA-01 — a judgment now subject to a pending Rule 1.540(d) motion in that original action.

The underlying foreclosure case was previously dismissed with prejudice on March 5, 2020. That dismissal was never vacated by court order. Petitioner has challenged all downstream litigation based on that voided judgment.

2. Federal Jurisdiction Pending

Petitioner has removed Orshan (Case No. 2024-022769-CA-01 to federal court and now in the U.S. Court of Appeals for the Eleventh Circuit, which remain pending. These filings raise federal questions including due process violations, 83 counts of fraud on the court, and federally protected SEALED filings.

Despite the removal and the pending appellate dockets related to (Case No. 2024-022769-CA-01, Judge Orshan has continued to act, including scheduling proceedings — a position Petitioner asserts lacks jurisdiction.

3. Overlooked Sealed Filings

Petitioner has filed multiple protective notices and sealed filings to preserve federally protected material and jurisdiction, These filings have gone unacknowledged by Judge Orshan's chambers. Meanwhile every motion filled by KP Investments has received review on the same date it was field.

4. Judicial Assistant's Statement

Judge Orshan's Judicial Assistant has advised Mr. Mirabal that the Judge does not routinely review filings unless a hearing is affirmatively requested. Based on that statement and since being advised, Petitioner has amended all motions and notices to include an explicit request for hearing including on the disqualification issue as follows:

" As relayed by the Judicial Assistant for this Court, Judge Orshan's docket encompasses over 2,000 active cases, and motions may not be reviewed unless a formal hearing is requested. Defendant therefore requests a hearing on this notice solely to ensure the Court acknowledges the filing, and does not overlook the pending jurisdictional conflict due to administrative volume"

5. No Response within 30 Days

Despite clear service and a request for hearing, Judge Orshan issued no order by July 22, 2025. Pursuant to Rule 2.330(j), the motion was deemed granted by operation of law. Petitioner filed a Notice of Deemed Granted Disqualification and transmitted a courtesy copy to chambers for Judge Nushin G. Sayfie listed as Chief Judge of the Eleventh Judicial Circuit on <https://www.jud11.flcourts.org/Judge-Details/ChiefJudge> .

6. Subsequent Action by Disqualified Judge The Honorable Ariana Fajardo Orshan now The Chief Judge of the Eleventh Judicial Circuit.

After the 30-day deadline passed, Judge Orshan issued an order denying the disqualification, and continued to allow litigation activity including a pending motion for sanctions filed by KP Investments. Petitioner contends these post-disqualification actions are nullities under Florida law.

Supplemental Note on Rule 2.330(f) and Non-Attendance at Deposition

On June 22, 2025, Defendant filed a Verified Motion to Disqualify Judge Ariana Fajardo Orshan, triggering the mandatory procedural safeguards under Florida Rule of General Practice and Judicial Administration 2.330(f),

which provides:

“The judge shall take no further action in the proceeding, except to enter an order on the motion, until the motion is resolved.”

From that moment forward, Judge Orshan was prohibited from enforcing prior orders or issuing any new rulings in the matter, other than addressing the disqualification itself. Defendant respectfully declined to appear at a deposition scheduled for July 22, 2025, pursuant to a judicial order that had become unenforceable under Rule 2.330(f). The court’s failure to timely rule on the motion resulted in an automatic disqualification under Rule 2.330(j), rendering any subsequent enforcement actions, including the pending motion for sanctions, jurisdictionally void and legally ineffective.

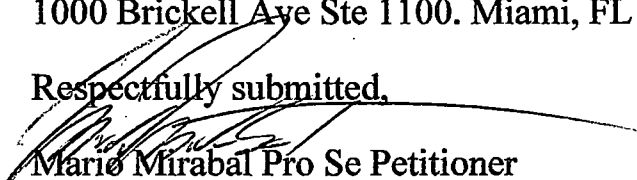
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Petition for Writ of Prohibition was served on July 31, 2025, via t U.S. Mail, to the following parties:

John Cunill Law Offices of Adorno & Cunill PL.

1000 Brickell Ave Ste 1100. Miami, FL 33131-3014

Respectfully submitted,


Mario Mirabal Pro Se Petitioner

563 W. 49th Street

Miami Beach, FL 33140

Tel: 786-479-6596

Email: solphax@gmail.com

Dated: August 4, 2025

EXHIBIT A

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA – CIVIL DIVISION
CASE NO.: 2024-022769-CA-01
SECTION: CA 03

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL (Ariana Birencwajg),

Defendants.

_____/

REQUEST FOR HEARING AND DEFENDANT’S VERIFIED MOTION
TO DISQUALIFY JUDGE ARIANA FAJARDO ORSHAN PURSUANT
TO FLORIDA RULE OF GENERAL PRACTICE AND JUDICIAL
ADMINISTRATION 2.330

COMES NOW the Defendant, Mario Mirabal, pro se and as Attorney-in-Fact
for co-Defendant Ariana Birencwajg, and respectfully moves for
disqualification of the Hon. Judge Ariana Fajardo Orshan from further
participation in this case pursuant to Rule 2.330, Florida Rules of General
Practice and Judicial Administration.

I. GROUNDS FOR DISQUALIFICATION

This motion is based on well-established grounds of judicial disqualification under Rule 2.330, which permits recusal when:

“the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.”

Defendant asserts a well-founded, objectively reasonable fear that continued oversight by Judge Orshan in this matter denies Defendant an impartial forum. Grounds include but are not limited to:

1. Asymmetric treatment of party filings—Defendant’s motions raising jurisdictional and constitutional issues have been repeatedly ignored, while Plaintiff’s motions are promptly calendared and granted.
2. Premature scheduling of dispositive hearings while federal jurisdiction and appeals remain pending, in contradiction to prior court advisories to avoid

ruling amid jurisdictional uncertainty.

3. Judge Orshan's issuance of a signed Order compelling in-person deposition (entered June 18, 2025) despite Defendant's live objections, multiple filings invoking the Supremacy Clause, and Defendant's absence from the hearing based on documented conflict with a federal oversight trip to Washington, D.C.

4. Failure to address Defendant's filed Notice of Federal Oversight and Jurisdictional Conflict submitted prior to the deposition order, and the complete omission of that notice from responsive rulings.

5. Pattern of one-sided rulings that strongly suggest predetermined judicial alignment, or at minimum, create the objective appearance of prejudice incompatible with due process.

II. PRESERVATION OF RIGHTS AND STAY OF PROCEEDINGS

This motion is timely under Rule 2.330(e), filed within 10 days of the entry of the June 18, 2025 order compelling Defendant's deposition.

Pursuant to Rule 2.330(f):

"The judge shall take no further action in the proceeding until the motion is ruled upon."

Defendant invokes this stay to prevent enforcement of the deposition order until this motion is adjudicated.

III. RELIEF REQUESTED

Defendant respectfully requests:

That Judge Ariana Fajardo Orshan be disqualified from further proceedings in this case,

That the matter be reassigned pursuant to Rule 2.330,

That all upcoming hearings or discovery actions be stayed pending proper reassignment.

As relayed by the Judicial Assistant for this Court, Judge Orshan's docket encompasses over 2,000 active cases, and motions may not be reviewed unless a formal hearing is requested. Defendant therefore requests a hearing on this notice solely to ensure the Court acknowledges the filing, and does not overlook the pending jurisdictional conflict due to administrative volume.

IV. VERIFICATION

I, Mario Mirabal, verify that the factual statements in this motion are true and correct to the best of my knowledge and belief.

/s/ Mario Mirabal

Mario Mirabal (Pro Se)

Attorney-in-Fact for Ariana Birencwajg

563 W 49th Street, Miami Beach, FL 33140

solphax@gmail.com | (786) 479-6596

Dated: June 22, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 22nd day of June, 2025 to:

John Cunill, Esq.

Counsel for Plaintiff KP Investments Miami, LLC

EXHIBIT B

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA – CIVIL DIVISION
CASE NO.: 2024-022769-CA-01
SECTION: CA 03
(Hon. Ariana Fajardo Orshan – recused)

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL (Ariana Birencwajg),

Defendants.

_____/

NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND
REQUEST FOR STAY PENDING FEDERAL AND RELATED
PROCEEDINGS

TO: The Honorable Nushin G. Sayfie, Chief Judge

Eleventh Judicial Circuit, Miami-Dade County, Florida

Defendant, Mario Mirabal, appearing pro se and as Attorney-in-Fact for co-Defendant Ariana Birencwajg, respectfully submits this Notice of Deemed Grant of Disqualification pursuant to Florida Rule of General Practice and Judicial Administration 2.160(f), and requests that all further proceedings in this matter be stayed pending resolution of jurisdictional matters now before the United States District Court, the Eleventh Circuit Court of Appeals, and the Hon. Javier Enriquez in Case No. 2018-018704-CA-01.

I. DISQUALIFICATION DEEMED GRANTED UNDER RULE 2.160(f)

On June 22, 2025, Defendant filed and served a Verified Motion to Disqualify the Honorable Judge Ariana Fajardo Orshan, pursuant to Florida Rule of Judicial Administration 2.160.

As of the date of this Notice, more than 30 days have passed without a ruling on that motion. Under Rule 2.160(f), where a judge has not entered an order granting or denying the motion within 30 days of service:

“The motion shall be deemed granted, and the moving party may seek an order from the chief judge.”

Accordingly, disqualification is now self-executing as a matter of law, and this Court is formally notified that the case must be reassigned.

II. REQUEST FOR STAY PENDING RELATED ACTIONS

In light of the now-granted disqualification, Defendant respectfully requests that the Chief Judge exercise her inherent administrative authority to:

Issue an administrative stay of all proceedings in this matter, including but not limited to:

Depositions;

Hearings or trial dates;

Motions to compel, sanction, or for summary judgment;

Maintain such stay pending outcome of:

Defendant's Rule 1.540(d) motion in Case No. 2018-018704-CA-01, which seeks to reinstate a 2020 final dismissal with prejudice that extinguishes the title interest asserted in this ejectment case;

Multiple pending federal appeals before the U.S. Court of Appeals for the Eleventh Circuit, involving overlapping parties, evidence, and property interests, as well as Rule 60(d)(3) filings and sealed submissions under the False Claims Act.

III. GROUNDS FOR STAY

This case is entangled with matters of federal jurisdiction, due process violations, fraudulent title conveyance, and state-federal conflict. Continued litigation at the trial level risks prejudicing ongoing federal review and final adjudication in:

Appeals already pending before the Eleventh Circuit;

Sealed federal proceedings involving Deutsche Bank and its assigns;

The state foreclosure case that forms the basis for Plaintiff's ejectment claim.

Failure to stay these proceedings risks irreparable procedural harm and institutional conflict between court rulings.

IV. PRAYER FOR RELIEF

Defendant respectfully requests:

That the Hon. Nushin G. Sayfie recognize that disqualification has been deemed granted under Rule 2.160(f);

That this case be reassigned accordingly;

That all proceedings in this matter be administratively stayed pending final adjudication of:

The pending Rule 1.540(d) motion in Case No. 2018-018704-CA-01;

All active Eleventh Circuit appeals and associated federal filings concerning

the same property.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal (pro se)

Attorney-in-Fact for Ariana Birencwajg

563 W. 49th Street, Miami Beach, FL 33140

solphax@gmail.com | (786) 479-6596

Dated: July 22, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 22nd day of July, 2025, to:

John Cunill, Esq.

Counsel for Plaintiff

EXHIBIT C

Emergency Filing – Notice of Deemed Granted Disqualification in Case No. 2024-022769-CA-01 (Judge Orshan)

Inbox



mario mirabel <solphax@gmail.com>
to rayala

Tue, Jul 22, 5:33 PM (9 days ago)

Ms. Ayala,

Please be advised that I have filed today an **Emergency Notice of Deemed Granted Disqualification** in Case No. 2024-022769-CA-01, pursuant to **Rule 2.330(j)** of the Florida Rules of General Practice and Judicial Administration.

The verified motion to disqualify Judge Ariana Fajardo Orshan was filed on **June 22, 2025**, and no order was entered within the 30-day period. Accordingly, disqualification is now **self-executing by operation of law**, and the matter is respectfully referred to the Chief Judge for administrative reassignment.

I am requesting a stay of proceedings in the interim, as detailed in the attached filing.

Respectfully,
Mario Mirabal
Pro Se Defendant
solphax@gmail.com

786-479-6596

Attachment: 2025 JUDGE ORSHAN NOTICE OF DEEMED GRANT OF DISQUALIFICATION.pdf

One attachment • Scanned by Gmail



Ayala, Ricarda
to Daniela, me

Wed, Jul 23, 1:20 PM (8 days ago)

Good afternoon,

Judge Sayfie is no longer the Chief Judge. As of July 1, 2025, Judge Fajardo Orshan is the new Chief Judge. Please reach out to her JA, Daniela, I have cc'd her in this email. Thank you.



Ricarda R. Ayala

Judicial Assistant to the
Honorable Judge Nushin Sayfie
Circuit Court Judge
Probate Division PMH07
Dade County Courthouse
73 West Flagler St., Rm. 1502
Miami, FL 33130
Phone: (305) 349-7595
rayala@jud11.flcourts.org

From: mario mirabel <solphax@gmail.com>

Sent: Tuesday, July 22, 2025 5:33 PM

To: Ayala, Ricarda <rayala@jud11.flcourts.org>

Subject: Emergency Filing – Notice of Deemed Granted Disqualification in Case No. 2024-022769-CA-01 (Judge Orshan)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

One attachment • Scanned by Gmail

Gonzalez-Varona, Daniela <dgonzalez-varona@jud11.flcourts.org>

Wed, Jul 23, 1:50 PM (8 days ago)

to Ricarda, me 

Good afternoon,

Received.

Thank you,

Daniela Gonzalez Varona

Judicial Assistant to the Honorable
Chief Judge Ariana Fajardo Orshan
Lawson E. Thomas Courthouse
175 N.W 1st Ave, Suite #3045
Miami, Florida 33130
Phone: (305) 349-5720
dgonzalez-varona@jud11.flcourts.org

From: Ayala, Ricarda <rayala@jud11.flcourts.org>

Sent: Wednesday, July 23, 2025 1:20 PM

To: mario mirabel <solphax@gmail.com>

Cc: Gonzalez-Varona, Daniela <dgonzalez-varona@jud11.flcourts.org>

Subject: RE: Emergency Filing – Notice of Deemed Granted Disqualification in Case No. 2024-022769-CA-01 (Judge Orshan)

EXHIBIT D

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

ORDER DENYING MOTION TO DISQUALIFY

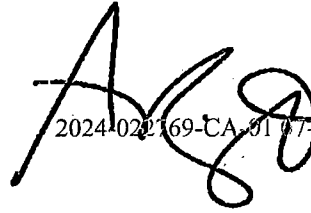
THIS CAUSE came before the Court on Defendant, Mario Mirabal's "REQUEST FOR HEARING AND DEFENDANT'S VERIFIED MOTION TO DISQUALIFY JUDGE ARIANA FAJARDO ORSHAN PURSUANT TO FLORIDA RULE OF GENERAL PRACTICE AND JUDICIAL ADMINISTRATION 2.330" (hereinafter "motion to disqualify"). The motion was filed on June 22, 2025, but was not served on the undersigned as required by Rule 2.330(d), and the undersigned was not aware of it until July 23, 2025, after receiving a "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS," which was filed on July 22, 2025.

The Court, having reviewed the motion to disqualify, hereby finds that it is legally insufficient.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

The motion to disqualify is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 30th day of July, 2025.



2024-022769-CA-01 07-30-2025 10:33 AM

2024-022769-CA-01 07-30-2025 10:33 AM

Hon. Ariana Fajardo Orshan

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

**ORDER DENYING MOTION TO DEEM DISQUALIFICATION GRANTED AND
REQUEST FOR STAY**

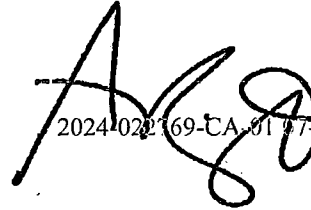
THIS CAUSE came before the Court on Defendant, Mario Mirabal's "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS," which was filed on July 22, 2025.

Rule 2.330(d) requires that a motion to disqualify be served "no later than 30 days after the service of the motion as set forth in subdivision (d)." The motion for disqualification in this case was filed on June 22, 2025, but was not served on the undersigned as required by Rule 2.330(d). When there is a lack of proper service on the Judge, the 30-day deadline does not begin to run until the Judge actually receives the motion. *See Baker v. State*, 230 So. 3d 173, 174 (Fla. 1st DCA 2017); *Leila Corp. of St. Pete v. Ossi Consulting Engineers, Inc.*, 144 So. 3d 644, 646-47 (Fla. 2d DCA 2014). In this case, the motion was actually received by the undersigned on July 23, 2024, less than 30 days ago.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

The "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS" is **DENIED**.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 31st day of July, 2025.



2024-022769-CA-01 07-31-2025 10:31 AM

2024-022769-CA-01 07-31-2025 10:31 AM

Hon. Ariana Fajardo Orshan

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

EXHIBIT E

RULE 2.330. DISQUALIFICATION OF TRIAL JUDGES

(a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court when acting alone as the sole judicial officer in a trial or appellate proceeding. It does not apply to justices, appellate-level judges, or county and circuit judges sitting on a multi-judge appellate panel.

(b) Parties. Any party, including the state, may move to disqualify the judge assigned to the case on grounds provided by rule, statute, Code of Judicial Conduct, or general law, and in accordance with the procedural provisions of this rule.

(c) Motion. A motion to disqualify shall:

- (1) be in writing;
- (2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification, and identify the precise date when the facts constituting the grounds for the motion were discovered by the party or the party's counsel, whichever is earlier;
- (3) be sworn to or affirmed by the party by signing the motion or by attaching a separate affidavit;
- (4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions; and
- (5) include a separate certification by the attorney for the party, if any, that the motion and the client's statements are made in good faith.

(d) Service. In addition to filing with the clerk, the movant shall promptly serve a copy of the motion on the subject judge as set forth in rule 2.516.

(e) Grounds. A motion to disqualify shall set forth all specific and material facts upon which the judge's impartiality might

reasonably be questioned, including but not limited to the following circumstances:

(1) the party reasonably fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge; or

(2) the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse of domestic partner of such a person:

(A) has more than a *de minimis* economic interest in the subject matter in controversy or is a party to the proceeding, or an officer, director, or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) has more than a *de minimis* interest that could be substantially affected by the proceeding; or

(D) is likely to be a material witness or expert in the proceeding.

(3) The judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter; or

(4) The judge has prior personal knowledge of or bias regarding disputed evidentiary facts concerning the proceeding.

(f) Prohibition against Creation of Grounds for Disqualification Based Upon Appearance of Substitute or Additional Counsel. Upon the addition of new substitute counsel or additional counsel in a case, the party represented by such newly appearing counsel is prohibited from filing a motion for disqualification of the judge based upon the new attorney's involvement in the case. This subdivision shall not apply, however, to a motion to disqualify a successor judge who was not the

presiding judge at the time of the new attorney's first appearance in the case.

(g) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 20 days after discovery by the party or party's counsel, whichever is earlier, of the facts constituting the grounds for the motion. The motion shall be promptly served on the subject judge as set forth in subdivision (d). Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c)(1) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.

(h) Determination — Initial Motion. The judge against whom an initial motion to disqualify under subdivision (e) is directed may determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. Such an order does not constitute acknowledgement that the allegations are true.

(i) Determination — Successive Motions. If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (e), a successor judge cannot be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.

(j) Prior Rulings. Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 30 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.

(k) Recusal Upon Judge's Initiative. Nothing in this rule limits the judge's authority to enter an order of recusal.

(l) Time for Determination. The judge against whom the motion for disqualification has been filed shall take action on the motion immediately, but no later than 30 days after the service of the motion as set forth in subdivision (d). If the motion is not denied within 30 days of service, the motion is deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

RULE 2.340. JUDICIAL ATTIRE

During any judicial proceeding, robes worn by a judge must be solid black with no embellishment.

PART IV. JUDICIAL PROCEEDINGS AND RECORDS

RULE 2.410. POSSESSION OF COURT RECORDS

No person other than judges and authorized court employees shall remove court records as defined in rule 2.430 from the clerk's office except by order of the chief judge or chief justice upon a showing of good cause.

Court Commentary

1996 Adoption. This rule was written as a result of the problems being encountered in the removal of files from clerks' offices. While the purpose of the rule is to discourage the removal of court files, it is not intended to prohibit chief judges or the chief justice from issuing for good cause a general order providing that attorneys or authorized individuals may be allowed to check out files on a routine basis to assist in the administrative efficiency of a court. We note that section 28.13, Florida Statutes (1995), similarly prohibits the removal of files from clerks' offices.

EXHIBIT 5

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION

KP INVESTMENTS MIAMI, LLC,

CASE NO.: 2024-022769-CA-01

Plaintiff,

JUDGE.: SIMON

v.

MARIO MIRABAL,
Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
VACATE AND NOTICE OF UNLICENSED PRACTICE OF LAW**

NOW COMES, the Plaintiff, KP Investments Miami, LLC, by and through its undersigned counsel, John Cunill, Esq. of the Law Offices of Adorno & Cunill, P.L., and pursuant to the applicable Florida Rules of Civil Procedure, hereby files this Response in Opposition to Defendant's Motion to Vacate and Notice of Unlicensed Practice of Law, and in support thereof states as follows:

INTRODUCTION

The present action is an ejectment action where the Defendant, Mario Mirabal ("Mirabal"), refuse to vacate the property owned by the Plaintiff. Instead, Mirabal continues to misuse the judicial process to delay resolution at times making a mockery of our Judicial System and engaging in the unlicensed practice of law. Defendant has repeatedly disregarded court orders, including the most recent Court's Order compelling Mirabal's deposition, and now seeks to vacate proceedings by filing meritless and procedurally defective motions including numerous appeals to the 11th Federal Circuit

Court of Appeals and the Third District Court of Appeals. A chart of the recent appeals filed at the Third District Court of Appeals is set forth below:

Court	Case Number	Case Title	Classification	Docket Date	Status
3rd District Court of Appeal	3D2025-1487	Mario Mirabal v. KP Investments Miami, LLC	Original Proceedings - Circuit Civil - Prohibition	08/04/2025	Open
3rd District Court of Appeal	3D2025-1103	Mario Mirabal v. KP Investments Miami, LLC	Original Proceedings - Circuit Civil - Certiorari	06/09/2025	Closed
3rd District Court of Appeal	3D2025-0540	Mario Mirabal v. KP Investments Miami, LLC	NOA Final - Circuit Civil - Other	03/27/2025	Closed

DEFENDANT’S MOTION IS LEGALLY INSUFFICIENT

Defendant’s “Motion to Vacate” [D.E.80] is procedurally deficient, fails to state a cognizable basis under Fla. R. Civ. P. 1.540 or any other applicable rule, and consists of conclusory assertions unsupported by admissible evidence. The motion appears to rehash claims regarding title and alleged federal matters that have been previously raised and rejected. Florida law is clear that title to the subject property has already been conveyed to Plaintiff by a Warranty Deed which was recorded on November 25, 2024. Simply put, Defendant has no legal or equitable interest in the property. It is evident that Defendant’s filings are intended to delay the process, as evidenced by Mirabal’s blatant refusal to attend a properly noticed deposition that was ordered by this Court. Mirabal’s continued

disrespect of this Court's authority warrants denial of the motion and the imposition of sanctions.

DEFENDANT IS ENGAGING IN THE UNLICENSED PRACTICE OF LAW

On July 22, 2025, Mirabal filed the Defendant's Notice of Disqualification [D.E.68] which explicitly states that he is filing "pro se and as Attorney-in-Fact for co-defendant Ariana Birencwajg." Defendant is not a licensed attorney in the State of Florida or any jurisdiction. Florida law strictly prohibits a nonlawyer from representing another individual in court proceedings and it is generally understood that the performance of services in representing another before the courts is the practice of law. *See Florida Bar re Advisory Opinion*, 265 So. 3d 447 (Fla. 2018). Defendant's attempt to represent Ms. Birencwajg constitutes the unlicensed practice of law ("UPL"), which not only invalidates his filings on her behalf but also exposes him to potential referral to The Florida Bar for investigation and sanctions.

SANCTIONS ARE APPROPRIATE

Plaintiff has already been forced to move for sanctions under Fla. R. Civ. P. 1.380 due to Defendant's willful non-appearance at his deposition. Defendant's Motion to Vacate and related filings only compound his abuse of process. Plaintiff respectfully requests that the Court:

- a. Deny Defendant's Motion to Vacate in its entirety;
- b. Strike all filings made by Defendant on behalf of any third party as unauthorized and constituting UPL;
- c. Refer Defendant's conduct to The Florida Bar for investigation into the unlicensed practice of law;

- d. Award Plaintiff further sanctions, including attorney's fees and costs, for Defendant's continued abuse of the judicial process.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order denying Defendant's Motion to Vacate, striking Defendant's improper filings, imposing sanctions as appropriate, and granting such further relief as the Court deems just and proper.

WHEREFORE, Plaintiff, KP Investments Miami, LLC, respectfully requests that this Honorable Court enter an Order:

1. Denying Defendant's Motion to Vacate in its entirety;
2. Striking all filings submitted by Defendant on behalf of any third party as unauthorized and constituting the unlicensed practice of law;
3. Referring Defendant's conduct to The Florida Bar for investigation into the unlicensed practice of law;
4. Awarding Plaintiff its reasonable attorney's fees and costs incurred in responding to Defendant's improper filings; and
5. Granting such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2025, a true and correct copy was served to the Defendant, Mario Mirabal, by e-filing in accordance with the Florida Rules of Judicial Administration. Additionally, a copy was sent via email to the Defendant's email address at: solphax@gmail.com.

/s/ John Cunill

John Cunill

Attorney for Plaintiff

Florida Bar Number: 101733

Law Offices of Adorno & Cunill, PL

1000 Brickell Ave. Ste. 1100

Miami, FL 33131

Telephone: (305) 381-9999

Fax: (305) 381-9898

E-Mail: john@acfirm.com

EXHIBIT 6

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
Case No. 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC,
Plaintiff,

v.

MARIO MIRABAL,
Defendant.

_____ /

DEFENDANT’S LINE-BY-LINE REPLY IN FURTHER SUPPORT OF
MOTION TO VACATE (VOID ORDERS), TO RECOGNIZE FEDERAL
DIVESTITURE, AND TO DENY PLAINTIFF’S SANCTIONS/
UNLICENSED PRACTICE OF LAW ACCUSATIONS AND
MISCHARACTERIZATIONS

PRELIMINARY STATEMENT I

The Fraud and Title Deception Narrative

The deed Plaintiff relies on is the very one Defendant challenges. Plaintiff's exhibit reflects a Special Magistrate deed "for Mario Mirabal" recorded on November 25, 2024 for \$10, tied to the earlier specific-performance case. That instrument is the subject of Defendant's fraudulent-conveyance challenge across state, bankruptcy, and federal filings.

Plaintiff, as part of the fraud perpetuated upon both Mr. Mirabal and the courts of this state and the United States, now asks the Court to believe that Mr. Mirabal — the legitimate homestead owner and party to a \$1.3 million contract with Carlos Perez / KP Investments — somehow conveyed his property for \$10. This is despite the existence of a settlement agreement between Mr. Mirabal and Deutsche Bank, in which Deutsche Bank accepted a \$590,000 payoff in full resolution of the foreclosure dispute, prior to Mirabal learning that the assignment relied upon by Deutsche Bank was fraudulent.

That assignment was forged by the now-disbarred David J. Stern law office, purporting to transfer the note and mortgage from IndyMac Bank to Deutsche Bank in 2010—more than two years after IndyMac ceased to exist. The transfer directly violated the Pooling and Servicing Agreement (PSA) governing the IndyMac INDX 2007-AR5 trust, in which Deutsche Bank served only as trustee, with no authority to foreclose or retain recoveries. All obligations were already satisfied through FDIC resolution in 2008.

In essence, Plaintiff asks this Court to believe that Mr. Mirabal—who had contracted to sell the property for \$1.3 million, and had settled the underlying loan for \$590,000—voluntarily transferred a \$2 million homestead for \$10. Even setting aside the forged assignment, Plaintiff's position suggests Mr. Mirabal relinquished over \$700,000 in equity without cause or compensation.

Plaintiff falsely represents Mr. Mirabal as a mere occupant of “KP’s property,” when in fact KP never held lawful title. The deed was recorded amid active state and federal proceedings, including after Deutsche Bank’s foreclosure had been dismissed with prejudice by Judge Bokor in 2020, a ruling Deutsche Bank never disclosed when KP pursued specific performance, in organized collusion to defraud Mr. Mirabal and the courts. .

These unresolved fraud and title issues remain active in:

The unadjudicated Rule 1.540(b) motion (Judge Miller / Judge Dimitris),

The unadjudicated Rule 1.540(b) motion (Judge Brinkley /Judge Enriquez),

The pending Rule 1.540(d) motion (Judge Enriquez),

Two unadjudicated federal adversary complaints (Bankruptcy Court) Now before (Eleventh Circuit),

The consolidated Rule 60(d)(3) fraud motion (Eleventh Circuit),

The All Writs Petition before the Florida Supreme Court (SC2025-1325).

The scope of coordinated fraud and concealment by KP Investments and its counsel, John Cunill, Kenneth Damas, and counsel for Deutsche Bank, merits the attention of both the FBI, the U.S. Department of Justice, and national media. A careful review of the record reveals that across every forum —

state, federal, bankruptcy, and appellate — the same pattern repeats: procedural abuse, forum manipulation, and the manufacture of title through deception.

PRELIMINARY STATEMENT II

Jurisdictional Defect and Judicial Disqualification

Federal divestiture. Defendant noticed removal and federal proceedings in April 2025. Under 28 U.S.C. § 1446(d), the state court “shall proceed no further” upon notice. Defendant’s Florida Supreme Court All-Writs petition places this Court on record notice that jurisdiction was divested in March/April 2025, and that any orders thereafter are ultra vires. The petition’s exhibit index identifies:

“Exhibit E: Defendant’s Notice of Federal Jurisdiction (April 2025)”

“Exhibit F: Notice of pending Eleventh Circuit Rule 60(d)(3) fraud motions”

— both of which Plaintiff’s Response disregards.

Disqualification. The same petition documents that Chief Judge Orshan was deemed recused in July 2025 and that Judge Simon was the subject of a timely disqualification motion in late August 2025. Nonetheless, both judges continued to act while disqualification and federal divestiture were in effect. The petition expressly requests recognition that “orders entered after these notices are ultra vires” and seeks a stay pending resolution of the federal

appeals and the Rule 1.540(d) motion before Judge Enriquez.

Scope of this Reply

Even setting divestiture and disqualification aside, Plaintiff's Response rests on misstatements of law and fact. The record shows:

- (a) Defendant's property interest by 2009 quitclaim deed;
- (b) disputed/tainted title arising from a special-magistrate deed recorded 11/25/2024;
- (c) pending federal Rule 60(d)(3) fraud appeals;
- (d) proper jurisdictional objections and notices of non-appearance post-removal; and
- (e) that the "UPL" accusation is a red herring—and in any event moot based on Defendant's clarified, exclusive pro se status.

I. Line-by-Line Reply to Plaintiff's "Introduction"

Plaintiff: "The present action is an ejectment action where the Defendant, Mario Mirabal ('Mirabal'), refuse to vacate the property owned by the Plaintiff."

Reply: The "ownership" premise is contested and presently under federal appellate and Rule 60(d)(3) fraud review. Plaintiff's own Chain-of-Title letter concedes the property first passed to Mirabal (2009 Quitclaim), and only later by special-magistrate deed recorded 11/25/2024 to KP—an instrument Defendant challenges as void for fraud and procedural violations.

See also Defendant's motions in the Miller/Dimitris matter identifying the same conveyance (CFN 20240890446, Book 34509, Page 3025) as the product of collusion and stay violations.

Plaintiff: "Mirabal continues to misuse the judicial process to delay resolution at times making a mockery of our Judicial System and engaging in the unlicensed practice of law."

Reply: The federal filings are not "misuse"; they are mandated safeguards after removal and before Eleventh Circuit fraud appeals. The Florida Supreme Court petition catalogs those notices and argues federal divestiture; Plaintiff omits them. It is in fact, counsel for KP and Deutsche Bank that have made a mockery of our Judicial System.

As for UPL, see § III below—Plaintiff quotes a single "attorney-in-fact" reference in a notice; Defendant does not represent any other party in this case and appears pro se for himself, as reflected throughout the filings (including the Supreme Court petition's signature block).

Plaintiff: "Defendant has repeatedly disregarded court orders, including the most recent Court's Order compelling Mirabal's deposition..."

Reply: Defendant timely filed objections and notices that post-removal discovery is barred and that the Court's power was divested; he also set and requested hearings on these objections. See Request for Hearing on Defendant's Objection to Notice of Deposition and Notice of Barred Proceedings under Federal Supremacy and Rule 60(d)(3), and Constitutional Objection and Notice of Non-Appearance Due to Lack of Jurisdiction.

The later order compelling a date/time—procured by Plaintiff—cannot cure the threshold jurisdictional defect and is itself void if entered after removal and/or by a disqualified judge.

Plaintiff: “...and now seeks to vacate proceedings by filing meritless and procedurally defective motions including numerous appeals to the 11th Federal Circuit Court of Appeals and the Third District Court of Appeals.”

Reply: The Eleventh Circuit filings include a consolidated Rule 60(d)(3) fraud motion supported by sworn contradictions in Deutsche Bank’s proof of claim and state filings. Those contradictions are detailed at length and are anything but “meritless.”

Defendant also filed a Notice of Federal Appeal to the Eleventh Circuit and Notice of Stay Pending Appeal, both served in this ejectment action—again ignored by Plaintiff.

II. “Defendant’s Motion is Legally Insufficient” — point-by-point

Plaintiff: “Defendant’s Motion relies on conclusory assertions and fails to state a cognizable basis for vacatur under Florida law.”

Reply: The Motion sets out two independent cognizable bases: (1) voidness

for lack of jurisdiction post-removal and after disqualification (all orders entered thereafter are ultra vires); and (2) fraud-tainted title and fraud upon the court now under Eleventh Circuit review. The Florida Supreme Court petition presents both jurisdictions defects and seeks a stay; the Eleventh Circuit motion catalogs the evidentiary conflicts and false statements.

Plaintiff: “Florida law is clear that title to the subject property has already been conveyed to Plaintiff by a Warranty Deed which was recorded on November 25, 2024.”

Reply: The fact of recordation is not in dispute; its validity is. The 11/25/2024 Special-Magistrate Warranty Deed (CFN 20240890446; Book 34509; Page 3025) was executed while material disputes and stays were pending, without notice to Defendant, and amid the very fraud issues now before the Eleventh Circuit. Defendant moved in the Miller/Dimitris action to invalidate that conveyance for fraud and collusion.

In addition, Plaintiff’s own Chain-of-Title letter acknowledges Defendant’s prior 2009 Quitclaim Deed interest.

Plaintiff: “Simply put, Defendant has no legal or equitable interest in the property.”

Reply: The record shows the opposite: 2009 Quitclaim Deed to Mirabal (OR Book 26948, Page 1614) and continuous homestead possession.

Plaintiff's ejectment complaint itself pleads the chain that begins with Ariana's deed to Mirabal before the disputed 2024 deed to KP.

Whether KP took derivative, tainted title from a fraudulent post-judgment process is the live controversy—not a foregone conclusion. See also Defendant's motions itemizing violations (fraudulent transfer; improper notice; unresolved encumbrances).

III. "Unlicensed Practice of Law" — mischaracterization and mootness

Plaintiff: "On July 22, 2025, Mirabal filed the Defendant's Notice of Disqualification [D.E. 68] which explicitly states that he is filing 'pro se and as Attorney-in-Fact for co-defendant Ariana Birencwajg.' ... constitutes the unlicensed practice of law ('UPL')."

Reply:

No representation of others in pleadings. Defendant has consistently appeared pro se on his own claims and defenses. The cited notice's descriptive reference to "attorney-in-fact" reflected chain-of-title background (Ariana's earlier conveyance to Defendant and POA to Mr. Mirabal; later bank/servicer reliance on a POA instrument) and not an attempt to litigate for Ariana. See, e.g., the Supreme Court petition signature block: "Mario Mirabal, Pro Se."

Mootness/curative relief. To the extent Plaintiff contends a single phrase could be misconstrued, Defendant disclaims any representation of any co-party and requests the Court to treat any "attorney-in-fact" phrasing as surplusage or stricken. The underlying issues (federal divestiture; fraud upon

the court) stand on Defendant's own property interest and filings.

UPL as a distraction. Plaintiff's Response invokes UPL to avoid addressing the fraud-tainted assignment chain, and KP's advance knowledge of litigation risks reflected in the Perez deposition and title documents.

IV. "Sanctions are appropriate" — no willful violation; proceedings were divested/stayed

Plaintiff: "Plaintiff has already been forced to move for sanctions under Fla. R. Civ. P. 1.380 due to Defendant's willful non-appearance at his deposition."

Reply: Defendant served jurisdictional objections and a notice of non-appearance specifically because, after removal and with federal appeals pending, discovery in state court was barred. He also sought a hearing on those objections.

Plaintiff then obtained an order to compel a date/time—but that order was entered post-divestiture and amid the disqualification posture documented in the Supreme Court petition; it is void and cannot support sanctions.

V. Record-Based Rebuttals to Additional Assertions

“Rightful owner” theme. Plaintiff’s ejectment complaint predicates “rightful owner” on the 11/25/2024 special-magistrate deed; yet Plaintiff’s own exhibits show the chain passing through Mirabal’s 2009 deed and then the magistrate deed produced during contested litigation.

The warranty deed itself confirms the grantor is the Special Magistrate “for Mario Mirabal”—underscoring that KP’s title is derivative of a process Defendant challenges as void.

Knowledge and good faith. The Perez deposition and title subpoenas show KP and counsel were aware of active litigation and payoff/title issues before and during contracting/litigation.

The Eleventh Circuit motion compiles these conflicts (e.g., verified claims of clean title versus sworn admissions of known defects and lost note).

Appeals chart. Plaintiff’s “chart” in the Response is selective and omits the Eleventh Circuit filings and notices already served in this case (Notice of Federal Appeal; Notice of Stay Pending Appeal; Notice of Federal Proceedings).

The Florida Supreme Court petition likewise catalogs the April 2025 federal notices and seeks recognition that post-removal orders are void.

VI. Relief Requested

For the reasons above and those in Defendant's underlying motion, Defendant respectfully requests that the Court:

Recognize federal divestiture under 28 U.S.C. § 1446(d) as noticed in April 2025, and hold that all orders entered thereafter in this action are void; alternatively, stay/abate all proceedings pending resolution of Defendant's Eleventh Circuit appeals and Rule 60(d)(3) fraud proceedings.

Deny Plaintiff's Response and any request for sanctions, because (a) any orders compelling discovery were ultra vires and (b) Defendant served timely notices/objections of divestiture and non-appearance.

Reject/Moot the UPL accusation; to the extent a single notice's "attorney-in-fact" phrasing could be misconstrued, treat it as surplusage or stricken. Defendant proceeds pro se solely on his own behalf.

In the alternative If, upon review of this record, the Court recognizes the pattern of fraud perpetrated upon it, Defendant respectfully requests that the Court consider formal referral of this matter for scrutiny by the United States Department of Justice. Such referral would pertain to the conduct of Carlos Perez / KP Investments Miami LLC, his counsel John Cunill, for their roles in executing and concealing fraud on this Court and others in state and federal proceedings

Grant such other and further relief as is just.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W. 49th Street, Miami Beach, FL 33140

Email: solphax@gmail.com

Certificate of Service. I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts E-Filing Portal and served on all counsel of record on 9.5.2025.

EXHIBIT 7



CLERK COVER LETTER – Appeal No. 25-11254 – F

(Mandamus – FCA Docket and Procedural Integrity)

Re: Rule 60(d)(3) Motion for Relief from Judgment Based on Fraud Upon the Court

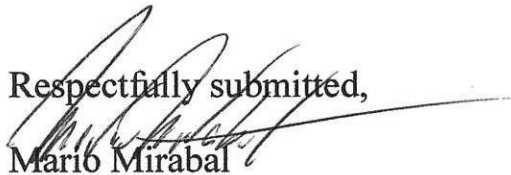
(Related Appeals: 25-10858, 25-10862, 25-11120, 25-11182, 25-11183)

Dear Clerk of Court:

Enclosed for filing in the above-captioned appeal is Appellant's Motion for Relief from Judgment Under Rule 60(d)(3), supported by Appendices A through E and documentary evidence of systemic fraud.

Please file this motion in connection with Appeal No. 25-10858 and update the docket accordingly. A Certificate of Service is enclosed.

Respectfully submitted,


Mario Mirabal

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT

Appeal No. 25-11254 *F*

In re: Mario Mirabal,

Petitioner.



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APPENDICES

Appendix A – Forensic Evidence Record: 83 Verified Fraudulent Statements and Responses

Appendix D – Proof of Claim Contradiction Index (Deutsche Bank Bankruptcy Filings)

Complaint vs. Deposition Conflict Index – KP Specific Performance (2022 Case)

Complaint vs. Deposition Conflict Index – KP Ejectment (2024 Case)

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C.I.P. list

Certificate of Service

Clerk Cover Letter

Court Cover Page

**MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(d)(3)
BASED ON FRAUD UPON THE COURT**

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT**

Mario Mirabal

Pro Se Appellant

563 W. 49th Street

Miami Beach, FL 33140

Date: May 13, 2025

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 60(d)(3), Appellant Mario Mirabal respectfully moves this Court to vacate and nullify all rulings, orders, and judgments in the consolidated actions and underlying proceedings listed herein, on the basis of fraud upon the court perpetrated by Deutsche Bank National Trust Company and KP Investments Miami, LLC, acting jointly and severally.

This Court has inherent equitable authority to act where fraud undermines the integrity of judicial proceedings. The relief sought here is necessary to:

Vacate foreclosure and post-foreclosure judgments that were obtained through fabricated documents and false testimony;

Nullify a fraudulent proof of claim and all litigation derived from it;

Prevent future abuse of the courts based on the same fraudulent chain of title;

Restore Appellant's right to judicial integrity, due process, and a lawfully recognized homestead.

II. INCORPORATION OF PRIOR RECORD AND NOTICE

This Motion incorporates by reference the Supplemental Request for Judicial Notice and Reservation of Rights Re: Fraud Upon the Court and Systemic Procedural Misconduct, previously filed in these consolidated appeals. That submission included Appendix A, cataloguing 83 instances of procedural and evidentiary fraud across related state, federal, and bankruptcy forums.

Appellant now supplements that record with additional forensic materials:

Appendix A, cataloguing 83 instances of procedural and evidentiary fraud across related state, federal, and bankruptcy forums

Appendix D: Proof of Claim Contradiction Index – 20 material falsehoods submitted by Deutsche Bank in bankruptcy court.

Complaint vs. Deposition Conflict Indices (Specific Performance and

Ejectment) – exposing KP’s perjury and coordinated misrepresentation with Deutsche Bank.

Appendix E: Index of All Related Cases Infected by Fraud.

These materials collectively demonstrate an interlocked scheme by Appellees to fabricate standing, suppress litigation records, forum-shop across jurisdictions, and deprive Appellant of property rights through fraud and concealment.

III. LEGAL STANDARD UNDER RULE 60(d)(3)

Rule 60(d)(3) authorizes federal courts to vacate judgments obtained by “fraud upon the court.” This includes:

Perjury;

Fabrication of evidence;

Concealment of material facts;

Use of void or forged documents;

Conduct that “defiles the court itself” and undermines the judicial process.

See:

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944);

Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978) (binding in 11th Cir.);

Travelers Indem. Co. v. Gore, 761 F.2d 1549 (11th Cir. 1985);

United States v. Estate of Stonehill, 660 F.3d 415 (9th Cir. 2011);

Wilkins v. United States, 2020 WL 6263982 (11th Cir.) (unpublished).

Fraud upon the court may be addressed at any time and is not constrained by normal rules of finality or laches. The Court may act sua sponte, and relief is appropriate where fraud threatens the court's legitimacy, not merely the outcome of a specific case.

IV. SUMMARY OF FRAUD ACROSS COURTS

Deutsche Bank and KP Investments executed a multi-forum scheme that spanned:

State Foreclosure Action

Case No. 2018-018704-CA-01 (11th Judicial Circuit, Miami-Dade)

Filed a foreclosure without possession of the Note;

**Claimed ownership based on assignments made after the assignor
(IndyMac) ceased to exist;**

Later admitted the Note was lost, contradicting sworn affidavits.

Specific Performance Suit (KP)

Case No. 2022-004706-CA-01

KP claimed good-faith purchase based on foreclosure;

**Carlos Perez admitted under oath that KP knew the foreclosure was
contested and defective;**

Complaint directly contradicted deposition testimony.

Ejectment Suit (KP)

Case No. 2024-022769-CA-01

KP falsely claimed there was no pending litigation;

Deposition testimony confirmed full knowledge of ongoing litigation;
appeals and removals;

KP withheld these facts from the court to obtain possession.

Federal Bankruptcy Proceedings

Case No. 23-20131-CLC / Adv. No. 24-01418-CLC

Deutsche Bank filed a 100+ page Proof of Claim riddled with falsehoods:

Claiming to possess the Note (contradicted by Entry #145);

Claiming no pending litigation (when federal appeals were underway);

Claiming valid assignments from a defunct entity.

Federal District Court

Case No. 1:25-cv-20746-JEM (removed foreclosure)

Case No. 1:25-cv-20010-PCH (False Claims Act filing, under seal)

Federal Appellate Jurisdiction

**Appeal Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-11183,
25-11254**

V. INTEGRATED FRAUD INDICES: APPENDICES A, D, E, F

Appendix A:

**Forensic Evidence Record: 83 Verified Fraudulent Statements and
Responses 2028-2025**

Appendix D:

**Details 20 contradictions between Deutsche Bank's Proof of Claim and
prior sworn foreclosure filings. Includes:**

False possession of Note;

Forged assignments;

Misstatements of pending litigation;

Fabricated payment records.

Deposition Conflict Index: Specific Performance

(Case No. 2022-004706-CA-01)

Carlos Perez admitted pre-suit coordination with Deutsche Bank and full knowledge of ongoing legal conflict.

Deposition Conflict Index: Ejectment

(Case No. 2024-022769-CA-01)

KP claimed foreclosure was final and uncontested;

Deposition testimony and federal docket confirm the opposite.

Appendix E: Case Index

(A complete list of all cases affected by the fraud is attached.)

VI. REQUEST FOR GLOBAL RELIEF

In light of the overwhelming record of fraud — across state, federal, and bankruptcy forums — Appellant respectfully requests that this Court:

VACATE all judgments and orders in the following cases as infected by fraud:

2018-018704-CA-01 (State Foreclosure)

2022-004706-CA-01 (Specific Performance)

2024-022769-CA-01 (Ejectment)

23-20131-CLC (Bankruptcy)

24-01418-CLC (Bankruptcy Adversary)

1:25-cv-20746-JEM (Federal Removal Case)

All consolidated appeals now before this Court

NULLIFY the foreclosure judgment and related public record recordings (e.g., CFNs 20240890448, 20250155101), as tainted instruments used in furtherance of fraud.

ISSUE A DECLARATORY FINDING that Deutsche Bank lacks standing and that its claims to the property were based on fraudulent instruments and misrepresentations.

BAR FUTURE LITIGATION against Appellant's homestead by Deutsche Bank, KP Investments, PHH Mortgage or any party deriving interest from the voided foreclosure.

**REFER THIS RECORD to the U.S. Department of Justice and Federal
Bureau of Investigation for further action under:**

18 U.S.C. § 1001 (false statements);

18 U.S.C. § 152 (bankruptcy fraud);

18 U.S.C. § 1341 (fraud);

Florida Statutes § 817.535 (fraudulent filings);

Florida RICO Act, § 772.103.

**PRESERVE APPELLATE JURISDICTION over all related actions until
final determination and enforcement of relief.**

VII. CONCLUSION

This Court now holds the full record.

**Appellant has demonstrated, with verified documentary and testimonial
evidence, a long-running scheme by Deutsche Bank and KP Investments to
defraud multiple courts, manipulate judicial process, and wrongfully deprive
a citizen of his home through false filings and coordinated
misrepresentations.**

This is not merely a dispute. It is a coordinated assault on judicial integrity.

Rule 60(d)(3) provides the remedy — and the moment to restore faith in the rule of law.

Appellant further confirms that, in parallel with this motion, copies of the supporting record — including this filing and the previously submitted Judicial Notice with Appendix A — have been transmitted to the United States Department of Justice and the Federal Bureau of Investigation for independent review, consistent with public integrity oversight.

Respectfully submitted,

May 13, 2025

A handwritten signature in black ink, appearing to read 'Mario Mirabal', with a long horizontal flourish extending to the right.

Pro Se Appellant

563 W. 49th Street

Miami Beach, FL 33140

APPENDIX A: FULL FORENSIC EVIDENCE RECORD

83 Quotes + Responses Categorized by Fraud Type

Each Entry Includes:

Exact Quote

Source Citation (Docket Entry, Date, Case No.)

Direct Forensic Response

DEUTSCHE BANK FORECLOSURE FRAUD

Quote #1

"Plaintiff is the holder and owner of the Note and Mortgage."

(Source: Verified Complaint for Foreclosure, Entry #4, 05/10/2018, Case No. 2018-018704-CA-01)

Response: False. Deutsche Bank did not possess the Note. Later filings revealed it had been lost, contradicting the foundational claim of ownership.

Quote #2

"The Plaintiff is in possession of the original, executed Note."

(Source: Affidavit in Support of Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Plaintiff later filed Entry #145, admitting the original Note and Mortgage were lost, proving the affidavit was materially false.

Quote #3

"The endorsement on the Note reflects lawful transfer of ownership to

Deutsche Bank National Trust Company, as Trustee."

(Source: Motion for Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. The chain of title was defective. Later filings confirmed that the alleged transfer was not properly executed or supported by FDIC receivership data.

Quote #4

"There is no genuine issue of material fact as to Plaintiff's standing to foreclose."

(Source: Motion for Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Standing was based on possession of original documents later admitted to be lost. Deutsche Bank could not lawfully proceed.

Quote #5

"All conditions precedent to the foreclosure have been satisfied, including proper endorsement and delivery of the Note."

(Source: Motion for Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Deutsche Bank never had possession or a complete chain of endorsements. Foreclosure was obtained by misrepresentation.

Quote #6

"Due to an inadvertent misplacement by prior counsel, the original Note and Mortgage cannot be produced."

(Source: Motion to Substitute Original Note and Mortgage, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. This admission contradicts years of sworn claims under oath that the Note was in possession. It exposes fraud retroactively.

Quote #7

"Substitution of certified copies will not impact the validity of Plaintiff's foreclosure judgment."

(Source: Motion to Substitute Original Note and Mortgage, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. The foreclosure was granted based on false representations. Substitution cannot legitimize fraudulently obtained judgments.

Quote #8

"Plaintiff remains entitled to enforce the judgment regardless of physical possession of original instruments."

(Source: Motion to Substitute, Entry #145, 03/18/2025)

Response: False. Enforcement requires the original note under Florida law. This is a material misrepresentation of legal entitlement.

Quote #9

"Plaintiff's standing was established at the time of filing, and subsequent issues with document custody do not affect standing."

(Source: Motion to Substitute, Entry #145, 03/18/2025)

Response: False. Standing must exist at the inception of the case and cannot

be retroactively cured. This is a clear legal falsehood.

Quote #10

"Certified copies are sufficient to maintain enforcement of the foreclosure judgment."

(Source: Motion to Substitute, Entry #145, 03/18/2025)

Response: False. Certified copies cannot substitute original instruments in a contested foreclosure when authenticity is at issue.

Quote #11

"The note has been endorsed in blank and transferred to Plaintiff."

(Source: Summary Judgment Filing, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Later filings confirm the Note was lost, undermining all representations of physical possession or endorsement.

Quote #12

"There is no challenge to Plaintiff's entitlement to enforce the loan documents."

(Source: Summary Judgment Hearing Memo, Entry #79, 05/12/2022, Case No. 2018-018704-CA-01)

Response: False. Defendant filed Rule 1.540(b) motions and raised standing challenges. Statement was intended to suppress pending objections.

Quote #13

"All factual allegations in the complaint are admitted due to lack of answer."

(Source: Motion for Final Judgment, Entry #79, 05/12/2022, Case No. 2018-018704-CA-01)

Response: False. Defendant had raised defenses and later filed substantive challenges. The court was misled as to the procedural posture.

Quote #14

"Deutsche Bank has standing based on possession and a complete chain of title."

(Source: Final Judgment Submission, Entry #79, 05/12/2022, Case No. 2018-018704-CA-01)

Response: False. No complete assignment chain was produced. Subsequent filings confirmed the original note was never actually possessed.

Quote #15

"There are no pending challenges to Plaintiff's foreclosure rights."

(Source: Motion to Substitute Note, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. Federal appeals, bankruptcy adversary complaints, and Rule 1.540(b) motions were pending. Statement concealed litigation risk.

KP INVESTMENTS – SPECIFIC PERFORMANCE FRAUD

Quote #16

"Plaintiff is the lawful successor in interest to the subject property based on a final foreclosure judgment."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022, Case

No. 2022-004706-CA-01)

Response: False. The foreclosure judgment was under contest in federal and bankruptcy court and was based on known falsehoods.

Quote #17

"There is no pending challenge to the foreclosure judgment or to Plaintiff's entitlement to title."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. KP filed knowing full well that federal removal and appeals were pending. This statement concealed active litigation.

Quote #18

"The title acquired by Plaintiff is free of any cloud or encumbrance disputing Plaintiff's right to ownership."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. Title was clouded by procedural fraud, void assignments, and adversary claims in bankruptcy and federal court.

Quote #19

"At the time of entering into the purchase agreement, Plaintiff was unaware of any pending litigation contesting title."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. Carlos Perez's deposition reveals KP's full knowledge of ongoing litigation with Deutsche Bank's assistance.

Quote #20

"Plaintiff had no reason to believe that Deutsche Bank's foreclosure judgment was defective or subject to appeal."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. KP's attorney discussed the risk with Deutsche Bank counsel and knew the judgment was compromised.

Quote #21

"There are no legal impediments to specific performance under the terms of the parties' agreement."

(Source: Motion for Summary Judgment, Entry #41, 10/19/2022)

Response: False. Legal impediments included ongoing appeals, adversary complaints, bankruptcy stay, and a void underlying title.

Quote #22

"No genuine dispute exists as to Plaintiff's entitlement to enforce the purchase contract and acquire title."

(Source: Motion for Summary Judgment, Entry #41, 10/19/2022)

Response: False. The contract was void ab initio due to fraudulent premise — based on title KP knew was acquired through misrepresentation.

Quote #23

"Defendant failed to raise any valid defense to Plaintiff's claims."

(Source: KP Reply to Opposition, Entry #42, 11/01/2022)

Response: False. Defendant had raised federal preemption, due process,

standing, and fraud-based objections on multiple records.

Quote #24

"Plaintiff's title is not impacted by any bankruptcy filings."

(Source: KP Motion, Entry #43, 12/01/2022)

Response: False. KP had been named in adversary proceedings in bankruptcy court and was aware of the automatic stay under 11 U.S.C. § 362(a).

Quote #25

"The contract for purchase and sale was negotiated at arm's length with no knowledge of title irregularities."

(Source: KP MSJ Brief, Entry #41, 10/19/2022)

Response: False. KP coordinated with Deutsche Bank's counsel before the lawsuit was filed. Carlos Perez admitted this under oath.

KP INVESTMENTS – EJECTMENT FRAUD

Quote #26

"Plaintiff is the lawful owner of the property pursuant to an uncontested foreclosure judgment."

(Source: Complaint for Ejectment, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. The foreclosure judgment was actively contested in federal court and under appeal. KP's claim was materially false.

Quote #27

"Defendant's continued occupation of the property is without legal right or authority."

(Source: Complaint for Ejectment, Entry #1, 02/12/2024)

Response: False. Defendant held legal possession under color of title while litigation was pending. KP attempted illegal dispossession.

Quote #28

"The foreclosure judgment upon which Plaintiff's title is based has not been appealed or vacated."

(Source: Complaint for Ejectment, Entry #1, 02/12/2024)

Response: False. KP omitted the existence of federal removal, adversary complaints, and pending motions for relief from judgment.

Quote #29

"There are no pending legal proceedings affecting Plaintiff's ownership rights."

(Source: Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. Numerous proceedings were pending in federal district and appellate courts, as well as bankruptcy.

Quote #30

"Plaintiff is entitled to immediate possession as a matter of law, without

further defense available to Defendant."

(Source: Motion for Summary Judgment, Entry #16, 04/12/2025)

Response: False. Defendant's rights were protected by ongoing appeals, bankruptcy protections, and disputes over void title.

Quote #31

"Defendant was properly served and has failed to appear."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025, Case No. 2024-022769-CA-01)

Response: False. Defendant had filed multiple responsive pleadings and was actively litigating in related federal and appellate forums.

Quote #32

"There is no active litigation that could affect the validity of Plaintiff's claim to possession."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025)

Response: False. At the time of filing, multiple appellate and bankruptcy proceedings were pending — KP's statement was knowingly false.

Quote #33

"Plaintiff's interest is not subject to any conflicting claim."

(Source: KP Complaint, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. Defendant had recorded instruments of title, was party to adversary complaints, and had submitted evidence of ongoing federal

challenges.

Quote #34

"Defendant has no legal interest in the property."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025)

Response: False. Defendant maintained legal and equitable interests under federal removal, Quitclaim title, POA and active bankruptcy protections.

Quote #35

"Immediate removal of Defendant is necessary to prevent continued unjust occupation."

(Source: KP Motion for Default Judgment, Entry #18, 04/20/2025)

Response: False. Defendant was legally present under litigation protections. KP's language mischaracterized lawful occupancy.

PUBLIC RECORD MANIPULATION

Quote #36

"Certified Copy of Final Summary Judgment recorded to memorialize Plaintiff's final ownership rights."

(Source: Miami-Dade CFN 20240890448, 11/25/2024, Book 34509 / Page 3029)

Response: Misleading. The judgment was re-recorded nearly two years after entry, at a time when appeals and removals were ongoing. It falsely implied resolution.

Quote #37

"Certified Copy of Remand Order filed to confirm jurisdiction over property title and finality of foreclosure."

(Source: Miami-Dade CFN 20250155101, 02/28/2025, Book 34638 / Page 4242)

Response: False. The remand did not validate the title but was recorded to mislead parties into believing the foreclosure had been federally ratified.

Quote #38

"Public records reflect uncontested final judgment."

(Source: KP Ejectment Complaint, Entry #1, 02/12/2024)

Response: False. Public records were manipulated to exclude federal removals, pending appeals, and adversary challenges.

Quote #39

"No inconsistencies exist in recorded chain of title."

(Source: KP MSJ Filing, Entry #16, 04/12/2025)

Response: False. Recorded assignments, re-recorded judgments, and judicial notices across multiple jurisdictions exposed material contradictions.

Quote #40

"Title chain is complete and uninterrupted from Deutsche Bank to Plaintiff."

(Source: KP Summary Judgment Brief, Entry #16, 04/12/2025)

Response: False. The assignment to KP occurred after federal disputes began and included breaks in title and standing issues acknowledged in

adversary proceedings.

CIVIL CONSPIRACY AND COORDINATED MISCONDUCT

Quote #41

"Plaintiff relies on the foreclosure judgment to confirm lawful title."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022, Case No. 2022-004706-CA-01)

Response: KP coordinated with Deutsche Bank to leverage a fraudulent foreclosure. Both parties knew the judgment was under challenge.

Quote #42

"There exists no cloud or defect on Plaintiff's title arising from foreclosure proceedings."

(Source: KP Summary Judgment Motion, Entry #41, 10/19/2022, Case No. 2022-004706-CA-01)

Response: False. KP actively concealed the procedural defects in the foreclosure record and used this statement to induce court reliance.

Quote #43

"Defendant's occupancy constitutes wrongful possession depriving Plaintiff of rightful property ownership."

(Source: KP Ejectment Complaint, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. Possession was held under color of law and active litigation. KP's ejectment was based on defective title.

Quote #44

"No pending legal actions impair Plaintiff's title to the property."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. KP failed to disclose multiple federal appeals, stay motions, and bankruptcy claims that directly impaired title.

Quote #45

"KP Investments did not engage in any coordinated activity with Deutsche Bank."

(Source: KP Summary Judgment Response, Entry #43, 12/01/2022, Case No. 2022-004706-CA-01)

Response: False. Carlos Perez admitted under oath that his attorney had discussions with Deutsche Bank's counsel before initiating litigation — confirming coordination.

Quote #46

"Plaintiff had no notice of ongoing challenges to Deutsche Bank's foreclosure judgment."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. KP's filings, deposition, and correspondence show awareness of prior litigation and existing jurisdictional conflicts.

Quote #47

"Plaintiff acted independently in reliance on public title records."

(Source: KP MSJ Filing, Entry #41, 10/19/2022)

Response: False. KP's filings indicate reliance on communications with Deutsche Bank, not merely recorded title history.

Quote #48

"Any defects in the foreclosure judgment do not affect Plaintiff's rights."

(Source: KP Summary Judgment Filing, Entry #41, 10/19/2022)

Response: False. Plaintiff's rights derive entirely from the judgment — any defects in that judgment necessarily invalidate Plaintiff's claim.

Quote #49

"Deutsche Bank had no involvement in Plaintiff's decision to file suit."

(Source: KP Motion, Entry #43, 12/01/2022)

Response: False. Record deposition testimony confirms KP coordinated litigation strategy with Deutsche Bank's prior counsel.

Quote #50

"Defendant's claims regarding FDIC resolution and void assignment are speculative and lack merit."

(Source: Deutsche Bank Motion to Dismiss Adversary Complaint, Entry # 12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. FDIC documentation confirms no further distribution or claims could arise post-closure. Assignments made after that were legally void.

ABUSE OF PROCESS / TORTIOUS INTERFERENCE

Quote #51

"Plaintiff requests issuance of writ of possession forthwith based on uncontested title ownership."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. Title was actively contested in multiple jurisdictions, and KP misled the court to expedite illegal dispossession.

Quote #52

"Plaintiff's final judgment was re-recorded to ensure public clarity and notice."

(Source: Miami-Dade Recording Memo, CFN 20240890448, 11/25/2024, Book 34509 / Page 3029)

Response: False. Judgment was re-recorded almost two years after entry, during the pendency of related federal appeals and bankruptcy litigation — suggesting an improper strategic motive.

Quote #53

"Plaintiff lawfully relied on dismissal of federal removal to validate title."

(Source: KP Summary Judgment Filing, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. The federal court remand was based on procedural irregularities, not adjudication of title. KP falsely construed the remand as confirmation of ownership.

Quote #54

"Defendant's bankruptcy case has no bearing on Plaintiff's claim."

(Source: KP MSJ Memo, Entry #16, 04/12/2025)

Response: False. The property was part of the estate and subject to bankruptcy stay protections. The filing knowingly ignored 11 U.S.C. § 362(a).

Quote #55

"All actions taken by Plaintiff have been in good faith reliance on judicial outcomes."

(Source: KP Motion for Final Judgment, Entry #18, 04/20/2025)

Response: False. KP pursued duplicative litigation, manipulated public records, and concealed appellate conflicts — all elements supporting abuse of process.

Quote #56

"No stay or pending appeal affects Plaintiff's rights to immediate possession."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025, Case No. 2024-022769-CA-01)

Response: False. Appeals were docketed and pending in both state and federal courts. KP's statement was knowingly false and intended to circumvent judicial review.

Quote #57

"Plaintiff properly disclosed all pending litigation related to this matter."

(Source: KP Ejectment Summary Judgment Filing, Entry #16, 04/12/2025)

Response: False. KP omitted ongoing bankruptcy adversary proceedings, appeals in the Eleventh Circuit, and prior 1.540(b) filings — thereby misleading the trial court.

Quote #58

"Deutsche Bank has no ongoing interest in this litigation and has not coordinated with Plaintiff."

(Source: KP Final Judgment Brief, Entry #18, 04/20/2025, Case No. 2024-022769-CA-01)

Response: False. KP's access to Deutsche Bank's foreclosure judgment and internal coordination prior to suit prove that they operated as aligned parties.

Quote #59

"Deutsche Bank was a valid creditor authorized to foreclose."

(Source: Deutsche Bank Foreclosure Complaint, Entry #4, 05/10/2018, Case No. 2018-018704-CA-01)

Response: False. FDIC resolution data and Deutsche Bank's later motion to substitute the lost note confirm the bank had no enforceable interest.

Quote #60

"Defendant failed to challenge the foreclosure judgment in a timely fashion."

(Source: Deutsche Bank Summary Judgment Memo, Entry #78, 04/15/2022)

Response: False. Defendant filed timely challenges, including a Rule 1.540(b) motion based on newly discovered fraud, supported by federal and bankruptcy filings.

Quote #61

"Assignment of mortgage was recorded before litigation commenced."

(Source: Deutsche Bank Affidavit of Assignment, Entry #142, 03/01/2025, Case No. 2018-018704-CA-01)

Response: False. Assignment occurred years into litigation and long after FDIC closure rendered further transfers void. The retroactive assignment was fabricated.

Quote #62

"The FDIC transfer history has no impact on Plaintiff's foreclosure rights."

(Source: Deutsche Bank Motion to Dismiss, Entry #12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. FDIC regulations prohibit post-closure asset transfers absent assignment through the receivership. Deutsche Bank had no legal basis for enforcement.

Quote #63

"Plaintiff never received any payments from Defendant after default."

(Source: Deutsche Bank Foreclosure Affidavit, Entry #78, 04/15/2022)

Response: Misleading. Defendant submitted evidence of mortgage assistance applications, partial payments, and disputed accounting — which

were ignored in pleadings.

Quote #64

"The adversary complaint fails to state a claim under any cognizable legal theory."

(Source: Deutsche Bank Motion to Dismiss, Entry #12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. The adversary complaint alleged specific statutory violations, including 18 U.S.C. §§ 1001, 1343, Fla. Stat. § 817.535, and civil RICO violations.

Quote #65

"Plaintiff has no knowledge of any existing disputes over title."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. At the time of this filing, title was actively disputed in the Eleventh Circuit Court of Appeals, as well as in adversary proceedings in bankruptcy court. KP's statement concealed those proceedings.

Quote #66

"There is no active litigation that could affect the validity of Plaintiff's claim to possession."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. At the time of filing, KP was on notice of pending federal appellate proceedings and a bankruptcy stay impacting possession. This is a

material concealment.

Quote #67

"Defendant was properly served and has failed to appear."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025,
Case No. 2024-022769-CA-01)

Response: False. Defendant had filed multiple responsive motions and pleadings across jurisdictions, including a pending Eleventh Circuit appeal. KP omitted this to obtain a wrongful default.

Quote #68

"KP Investments acquired title from Deutsche Bank without controversy or litigation."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022,
Case No. 2022-004706-CA-01)

Response: False. KP knew the foreclosure judgment was under dispute, and the assignment itself was the subject of active federal and bankruptcy court challenges.

Quote #69

"Plaintiff relied on the foreclosure judgment as final and enforceable."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022,
Case No. 2022-004706-CA-01)

Response: Misleading. KP knew of unresolved jurisdictional challenges and the pending federal review. The reliance was opportunistic and pretextual.

Quote #70

"There is no indication of impropriety in the assignment chain from Deutsche Bank to KP Investments."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022, Case No. 2022-004706-CA-01)

Response: False. The assignment occurred after the Note was declared lost, and after FDIC rules rendered further transfer unenforceable. KP concealed these facts.

Quote #71

"Plaintiff's interest is superior to any claim Defendant may assert."

(Source: KP Motion for Summary Judgment, Entry #41, 10/19/2022, Case No. 2022-004706-CA-01)

Response: False. Defendant's claim was based on void assignment doctrine, adversary complaints, and due process violations, all of which supersede KP's position.

Quote #72

"Plaintiff had no notice of Defendant's occupancy or legal objections to title."

(Source: KP Complaint for Ejectment, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. KP had been served with federal removal papers, motions for stay, and had actual knowledge of Defendant's occupancy under active appeals.

Quote #73

"Defendant has no legal interest in the property."

**(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025,
Case No. 2024-022769-CA-01)**

Response: False. Defendant maintained legal and equitable interests under federal removal, Quitclaim title, POA and active bankruptcy protections.

Quote #74

"The assignment of mortgage to Deutsche Bank occurred lawfully and prior to foreclosure."

(Source: Deutsche Bank Verified Complaint, Entry #4, 05/10/2018, Case No. 2018-018704-CA-01)

Response: False. No proof of assignment prior to foreclosure was ever produced. Later filings admitted the Note was lost, invalidating the purported timeline.

Quote #75

"All notice requirements under the mortgage have been met."

**(Source: Deutsche Bank Motion for Summary Judgment, Entry #78,
04/15/2022, Case No. 2018-018704-CA-01)**

Response: False. Defendant's 1.540(b) Motion contests that Paragraph 22 notice was never properly executed. No proof of mailing or compliance was provided.

Quote #76

"Deutsche Bank was entitled to enforce the Note based on endorsements."

(Source: Deutsche Bank Summary Judgment Filing, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. The Note had no complete chain of endorsements. Later entries admit its loss — undermining the enforceability claim.

Quote #77

"The foreclosure action was uncontested."

(Source: Deutsche Bank Motion for Final Judgment, Entry #79, 05/12/2022, Case No. 2018-018704-CA-01)

Response: False. Defendant raised affirmative defenses and later challenged judgment under Rule 1.540(b) based on fraud and concealed facts.

Quote #78

"No appeals are pending in relation to this foreclosure."

(Source: Deutsche Bank Motion to Substitute Original Note, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. Appeals were active in both federal and state court. The motion concealed jurisdictional facts that undermined the finality of the foreclosure.

Quote #79

"Assignment of the mortgage was executed pursuant to all applicable laws."

(Source: Deutsche Bank Assignment Filing, Entry #142, 03/01/2025, Case No. 2018-018704-CA-01)

Response: False. Assignment occurred years after the FDIC's resolution of IndyMac assets, and therefore could not convey legal interest under federal

receivership rules.

Quote #80

"The amount owed has been accurately calculated and remains due."

(Source: Deutsche Bank Proof of Claim, Entry #6, 01/26/2025, Case No. 23-20131-CLC)

Response: False. The amount includes interest post-discharge and administrative fees unsupported by any contract or legal basis. It was disputed in court filings.

Quote #81

"Plaintiff properly filed all required documents in support of its standing."

(Source: Deutsche Bank Motion to Dismiss Adversary Complaint, Entry # 12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. Key exhibits were missing, including original Note and chain of custody. Standing remained unsubstantiated throughout the action.

Quote #82

"All filings made by Plaintiff have been truthful and in accordance with the law."

(Source: Deutsche Bank Response Brief, Entry #13, 03/14/2025, Case No. 24-01418-CLC)

Response: False. Judicial findings and pending motions for fraud upon the court directly contest the veracity of Plaintiff's representations.

Quote #83

"Defendant's Rule 1.540 motion is untimely and lacks new evidence."

(Source: KP Opposition to 1.540(b), Entry #47, 01/10/2025, Case No. 2022-004706-CA-01)

Response: False. New evidence included deposition testimony, FDIC records, public filings, and manipulation of federal jurisdiction — all discovered after final judgment.

APPENDIX D: PROOF OF CLAIM CONTRADICTION INDEX

Deutsche Bank National Trust Company

Bankruptcy Case No. 23-20131-CLC

Foreclosure Case No. 2018-018704-CA-01

Contradiction #1

Proof of Claim Statement:

“Deutsche Bank is the holder of the Note and entitled to enforce the secured claim based on valid assignment of the Mortgage and physical possession of the Note.”

(Source: Proof of Claim, Exhibit A, filed 08/01/2023, Bankruptcy Case No. 23-20131-CLC)

Foreclosure Record Contradiction:

“Due to an inadvertent misplacement by prior counsel, the original Note and Mortgage cannot be produced.”

(Source: Motion to Substitute Original Note and Mortgage, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Legal Summary:

Deutsche Bank cannot simultaneously claim physical possession in federal bankruptcy court while admitting in state court that the Note was lost. This is a material contradiction under oath across forums. It violates 18 U.S.C. § 1001 (false statements) and supports vacatur under Rule 60(d)(3).

Contradiction #2

Proof of Claim Statement:

“The Mortgage was assigned to Deutsche Bank on June 18, 2010 by MERS acting on behalf of IndyMac Bank, F.S.B.”

(Source: Proof of Claim, Exhibit A – Assignment of Mortgage)

External Legal Contradiction:

IndyMac Bank ceased operations on July 11, 2008 and was placed into FDIC receivership. FDIC closed out remaining IndyMac-related claims and assets by March 19, 2009. No legal capacity existed for IndyMac to authorize or ratify an assignment in 2010.

Legal Summary:

The assignment relied upon was executed by a non-existent entity. Under Florida and federal law, such an assignment is void ab initio. Deutsche Bank’s reliance on this instrument constitutes fraud on the court and mail fraud (18 U.S.C. § 1341).

Contradiction #3

Proof of Claim Statement:

“The original Note bears an allonge with a valid endorsement in blank.”

(Source: Proof of Claim, Exhibit B – Note and Allonge)

Foreclosure Record Contradiction:

In Entry #145, Deutsche Bank admits the original Note is unavailable. Entry #78 previously stated under oath that the Note was physically held and contained all endorsements. These are mutually exclusive positions.

Legal Summary:

Deutsche Bank presented a scanned image of a Note with an endorsement in one forum and admitted the original was lost in another. The inconsistency raises red flags of document fabrication and bad faith misrepresentation across jurisdictions.

Contradiction #4

Proof of Claim Statement:

“The claim is based on a valid and enforceable obligation not subject to dispute or litigation.”

(Source: Proof of Claim, Part 2 – Basis for Claim)

Foreclosure Record Contradiction:

Ongoing federal removal proceedings, adversary complaints, motions to reopen, and challenges to standing were all active and on record at the time of the Proof of Claim filing.

Legal Summary:

By omitting mention of active litigation and asserting the claim was free from dispute, Deutsche Bank concealed material facts from the bankruptcy court. This constitutes a violation of FRBP 9011 and 18 U.S.C. § 152 (fraudulent concealment in bankruptcy).

Contradiction #5

Proof of Claim Statement:

“The secured claim includes all amounts owed under the Note, including principal, interest, and legal fees accrued through lawful foreclosure.”

(Source: Proof of Claim, Summary Page and Part 3 – Amount of Claim)

Foreclosure Record Contradiction:

The foreclosure judgment was obtained based on standing that Deutsche Bank later admitted it could not substantiate. No lawful foreclosure occurred because the chain of title was broken and fabricated. Entry #145 reveals the critical evidence was never in Deutsche Bank’s possession.

Legal Summary:

Deutsche Bank’s claim for fees and recovery is invalid as the foreclosure was void. The Proof of Claim misrepresents the origin of those sums and relies on a judgment procured through fraud upon the court. This opens liability under both federal bankruptcy law and civil RICO statutes.

Contradiction #6

Proof of Claim Statement:

“Deutsche Bank is the real party in interest and the rightful claimant of the debt secured by the mortgage.”

(Source: Proof of Claim, Part 1, filed 08/01/2023, Case No. 23-20131-CLC)

Foreclosure Record Contradiction:

The mortgage was originated by IndyMac Bank, F.S.B., which ceased to exist in 2008. The trust named in the foreclosure was not registered to do business in Florida, and the allonge does not clearly show lawful transfer.

Legal Summary:

Deutsche's claim to be the real party in interest fails under the requirements of Fla. R. Civ. P. 1.210(a). The foreclosure and proof of claim both rely on defective standing, rendering the assertion knowingly false.

Contradiction #7

Proof of Claim Statement:

"All documents attached are true and correct copies of original instruments."

(Source: Proof of Claim, Attachment A – Verification)

Foreclosure Record Contradiction:

Entry #145 admits that the original Note and Mortgage were lost. Any documents attached to the Proof of Claim are necessarily reproductions, not verified originals.

Legal Summary:

Swearing under penalty of perjury that copies are true and correct originals while simultaneously admitting originals are lost is materially misleading.

This supports Rule 60(d)(3) fraud upon the court.

Contradiction #8

Proof of Claim Statement:

“Deutsche Bank acquired the right to enforce the debt through a lawful chain of endorsements.”

(Source: Proof of Claim, Exhibit B)

Contradiction from Document Chain:

The “endorsement in blank” on the allonge has no date, no affiant, and is affixed to a note signed by a non-existent successor to IndyMac Bank. No PSA or trust delivery record confirms lawful transfer.

Legal Summary:

An undated, unauthenticated endorsement does not satisfy UCC or Florida evidentiary standards for holder status. The Proof of Claim falsely inflates Deutsche Bank’s entitlement.

Contradiction #9

Proof of Claim Statement:

“There is no evidence of fraud or dispute relating to the enforceability of the mortgage.”

(Source: Proof of Claim, Part 3)

External Contradiction:

Adversary complaints and multiple motions to reopen explicitly allege fraud, and the assignment was executed by robo-signer Erica Johnson-Seck, who has been discredited in prior litigation.

Legal Summary:

This representation conceals material fraud allegations known to the creditor and filed in the same forum. It constitutes a knowing false statement under federal law.

Contradiction #10

Proof of Claim Statement:

“Assignments have been duly recorded in the official records of Miami-Dade County.”

(Source: Proof of Claim, Assignment Attachments)

Contradiction from Public Records:

The key assignment (executed in 2010) was robo-signed and notarized by parties under investigation at the time (David J. Stern). No backup data supports its legitimacy.

Legal Summary:

A recorded assignment may be void for fraud. The court must look behind the instrument if its origin is legally impossible, as it is here due to FDIC cutoff in 2009.

Contradiction #11

Proof of Claim Statement:

“The Note has never been transferred to any other party and is held solely by Deutsche Bank.”

(Source: Proof of Claim, Exhibit B)

Contradiction from PSA and FDIC Data:

No FDIC transfer record or PSA custodial trail identifies Deutsche Bank as ever lawfully holding the original note. The MIN registry also showed the loan as inactive.

Legal Summary:

The absence of transfer evidence from FDIC or trust custodianship renders this claim false. The Proof of Claim misrepresents the origin of standing.

Contradiction #12

Proof of Claim Statement:

“The borrower defaulted on June 1, 2013.”

(Source: Proof of Claim, Loan History Summary)

Contradiction from Foreclosure Docket:

Deutsche Bank filed multiple inconsistent default dates across its pleadings (e.g., Complaint vs. Affidavit vs. Summary Judgment). In fact the borrower did not default on June 1, 2013.

Legal Summary:

This inconsistency demonstrates intentional shifting of narrative to support foreclosure strategy. It undermines the integrity of the claim.

Contradiction #13

Proof of Claim Statement:

“Deutsche Bank’s servicing records are accurate and complete.”

(Source: Proof of Claim, Exhibit C – Payment History)

Contradiction from Foreclosure Affidavit:

Servicing records in Entry #78 conflict with those in the bankruptcy claim — different balances, late fee accounting, and legal fees reported.

Legal Summary:

Conflicting servicing records presented under oath in two forums violates FRBP 9011 and supports sanctions for abuse of process and evidentiary manipulation.

Contradiction #14

Proof of Claim Statement:

“There are no pending appeals affecting Deutsche Bank’s rights.”

(Source: Proof of Claim, Part 3)

Contradiction from Federal Record:

As of the filing date, Mirabal had already removed the case to federal court

and filed adversary complaints. At least two appeals were pending.

Legal Summary:

This is a direct misstatement to the court designed to insulate the claim from review and limit trustee action. It reflects calculated concealment of federal litigation.

Contradiction #15

Proof of Claim Statement:

“All attorneys’ fees and charges are recoverable under the Note and Mortgage.”

(Source: Proof of Claim, Fee Breakdown)

Contradiction from State Ruling:

Mirabal challenged these fees and they were never adjudicated or approved in any state court order. No fee hearing occurred before Deutsche Bank filed the Proof.

Legal Summary:

The claim for legal fees was inflated and unsupported. Including them in the claim without adjudication violates FRBP 3001(c)(2)(B).

Contradiction #16

Proof of Claim Statement:

“No prior discharge, modification, or settlement affects this claim.”

(Source: Proof of Claim, Part 4)

Contradiction from Foreclosure Case:

Judge Bokor previously entered an order dismissing the foreclosure with prejudice based on settlement. Deutsche Bank later pretended this never occurred.

Legal Summary:

Filing a proof of claim while ignoring a prior dismissal order is a serious material omission that defrauds the court.

Contradiction #17

Proof of Claim Statement:

“The Note was endorsed in accordance with the Pooling and Servicing Agreement (PSA).”

(Source: Proof of Claim, Exhibit B)

Contradiction from PSA Terms:

The PSA deadline for loan delivery was May 2007. The note in question was assigned in 2010 — three years late.

Legal Summary:

This renders the assignment void under trust law. Late endorsements violate IRS REMIC rules and make the transfer legally impossible. The PSA and bankruptcy claim are fundamentally incompatible.

Contradiction #18

Proof of Claim Statement:

“The creditor has complied with all notice requirements under applicable law.”

(Source: Proof of Claim, Part 3)

Contradiction from Foreclosure Case:

No notice of acceleration was filed in the state case. The borrower received no reinstatement notice or pre-acceleration demand letter.

Legal Summary:

Violation of Fla. Stat. § 702.015 and the mortgage contract. No lawful acceleration occurred, voiding foreclosure and the proof of claim’s entire premise.

Contradiction #19

Proof of Claim Statement:

“The debtor has not disputed the debt in any meaningful forum.”

(Source: Proof of Claim, Part 2)

Contradiction from Entire Record:

Mirabal filed multiple adversary complaints, removal notices, and fraud allegations in federal and state court — all prior to the claim.

Legal Summary:

This is a false declaration made to obscure judicial review. It independently supports sanctions and vacatur under Rule 60(d)(3).

Contradiction #20

Proof of Claim Statement:

“The mortgage is not subject to any federal claims, inquiries, or investigations.”

(Source: Proof of Claim, Part 3)

Legal Summary:

Deutsche Bank failed to disclose known federal oversight. This statement is false and undermines the integrity of bankruptcy proceedings and appellate review.

COMPLAINT VS. DEPOSITION CONFLICT INDEX

KP Investments Miami, LLC v. Mirabal

Case No. 2022-004706-CA-01

Entry #1

Complaint Statement (KP Complaint)

“Plaintiff was unaware of any pending litigation or encumbrance affecting the property at the time the Purchase and Sale Agreement was executed.”

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Contradictory Testimony (Carlos Perez Deposition)

Perez testified that he retained a title company and attorney Kenneth Damas specifically to confirm whether the property had litigation risks. He further admitted being told by the seller's agent, Marion Ruiz, that foreclosure issues were unresolved.

(Source: Carlos Perez Deposition, pages 22–25)

Forensic Summary

This directly contradicts the verified pleading. KP had actual knowledge of the foreclosure and litigation risk and concealed that awareness. It constitutes a material falsehood in the verified complaint and supports a finding of perjury and fraud upon the court.

Entry #2

Complaint Statement (KP Complaint)

“Plaintiff relied on Defendant’s representations and proceeded in good faith without any knowledge that Defendant could not convey clean title.”

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

Perez admitted that the seller requested extensions of time because he was in the process of resolving litigation and title issues. KP was informed that clean title could not be delivered within the original contract period.

(Source: Carlos Perez Deposition, pages 25–27)

Forensic Summary

The deposition confirms that KP was aware the seller was unable to deliver clean title and refused to accommodate reasonable extensions. The complaint's representation of "good faith reliance" is false and was used to manipulate judicial enforcement.

Entry #3

Complaint Statement (KP Complaint)

"Plaintiff was not informed of any delay or litigation affecting title until after Defendant breached the agreement."

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

Perez confirmed that he was aware of foreclosure-related delays prior to the lawsuit and that KP refused to extend the closing timeline despite being told title was clouded.

(Source: Carlos Perez Deposition, pages 26–28)

Forensic Summary

The complaint implies seller misconduct and surprise. The deposition shows KP knowingly pushed forward despite clear title delays and used those circumstances to set up litigation. The misrepresentation goes to the heart of KP's claim for specific performance.

Entry #4

Complaint Statement (KP Complaint)

“At all relevant times, Plaintiff acted without knowledge of any legal impediment to the conveyance of title.”

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

When asked about prior knowledge of the foreclosure and communications with Deutsche Bank or their counsel, Perez confirmed that his attorney inquired directly with Deutsche Bank, establishing actual knowledge of title issues.

(Source: Carlos Perez Deposition, pages 28–31)

Forensic Summary

Acknowledgment of communication with the bank and legal advisors destroys KP’s claim of ignorance. The verified pleading was designed to whitewash pre-suit collusion or knowledge. This supports a finding of knowing concealment and coordinated fraud.

Entry #5

Complaint Statement (KP Complaint)

“Defendant refused to close without cause, damaging Plaintiff.”

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

Perez testified that Defendant requested more time to close due to unresolved litigation. KP refused, insisting on strict compliance despite

knowing title issues were ongoing.

(Source: Carlos Perez Deposition, pages 30–32)

Forensic Summary

The complaint miscasts KP as a victim when, in reality, it exploited known litigation delays to create a lawsuit scenario. This contradicts KP’s equitable claims and reveals an intent to leverage the courts to forcibly validate a tainted title.

Entry #6

Complaint Statement (KP Complaint for Specific Performance)

“Plaintiff had no contact or coordination with any third-party lender or entity regarding this transaction prior to initiating suit.”

(Source: Complaint, Entry #1, Case No. 2022-004706-CA-01, filed 05/20/2022)

Contradictory Testimony (Carlos Perez Deposition)

“Everything was done before — I mean, after I hired my attorney, because he's the one that inquired at the bank.”

(Carlos Perez Deposition, 10/27/2022, Page 61, Lines 1-3)

Response:

This directly contradicts the complaint’s sworn claim that KP had no prior communication or coordination with Deutsche Bank or its agents. It proves collusion, destroys KP’s claim of good-faith independence, and establishes perjury and fraud upon the court.

Forensic Summary

Carlos Perez’s deposition admission that his attorney communicated with Deutsche Bank’s attorney before the lawsuit was filed directly contradicts the complaint’s assertion of no prior coordination. This is not a matter of interpretation — it is a factual, testimonial confirmation of collusion. The contradiction rises to the level of material misrepresentation under oath, supports a claim of fraud upon the court, and undermines KP’s foundation of standing and good faith.

EJECTMENT COMPLAINT VS. DEPOSITION CONFLICT INDEX

(Case No. 2024-022769-CA-01)

Conflict #1 – Title Awareness and Due Diligence

Ejectment Complaint Claim:

“Plaintiff is the rightful owner of the property” and “has legal title” (§6) and “is entitled to possession.”

(Complaint for Ejectment, filed 11/27/2024)

Deposition Conflict:

Carlos Perez admitted he hired the Law Offices of Adorno – Cunill & Damas to conduct a title search prior to entering contract — meaning he knew about existing foreclosure proceedings.

(Deposition, 10/27/2022)

Conflict #2 – Foreclosure Knowledge Before Filing Suit

Ejectment Complaint Claim:

Nowhere in the complaint does KP disclose knowledge of active litigation over the property's title.

Deposition Conflict:

Carlos Perez confirms via deposition that both he and his counsel were aware of litigation and communication difficulties between Mirabal and the bank. He admits Marion Ruiz (the realtor) informed him the bank wasn't responding and that Mirabal needed more time.

(Deposition, Page 31, Lines 1–11)

Conflict #3 – Truthfulness of Verification

Ejectment Complaint Verification:

Carlos Perez attested under oath: “the facts stated herein are true and correct to the best of my knowledge and belief.”

(Complaint Verification, 11/27/2024)

Deposition Conflict:

Perez falsely testified about ownership of a nearby property, claiming it was owned by KP Investments, when it was in fact owned personally by him — showing pattern of misrepresentation.

(Deposition, Page 27, Lines 17–19)

Conflict #4 – Alleged Lack of Knowledge of Contractual Defect

Ejectment Complaint Claim:

KP Investments asserts full legal entitlement, implying no known defects or disputes exist.

Deposition Conflict:

Perez admits that he and his counsel discussed the property's litigation status and foreclosure risks before filing. This undermines their claims of good-faith belief in uncontested ownership.

(Deposition analysis and supporting exhibits)

Conflict #5 – No Defenses Exist

Ejectment Complaint Claim:

“The Defendant has no legal right to remain in the property and has failed to raise any valid defense.”

(Complaint for Ejectment, Entry #1, ¶9, filed 02/12/2024)

Deposition Conflict:

Carlos Perez confirmed in sworn deposition that he was aware of disputes regarding title, ongoing litigation, and unresolved foreclosure irregularities, all of which directly form the basis of Mirabal's defenses.

(Deposition of Carlos Perez, 10/27/2022, p. 31, lines 6–15)

Conflict #6 – No Pending Litigation or Appeal

Ejectment Complaint Claim:

“There are no pending appeals or legal challenges to Plaintiff’s title or right of possession.”

(Complaint, Entry #1, ¶8)

Deposition Conflict:

KP acknowledged knowing of federal filings, bankruptcy proceedings, and removals pending as of 2022 and 2023.

Perez was specifically informed that title was being contested in state courts.

(Deposition, p. 33, lines 4–18)

Conflict #7 – Judicial Record Use to Imply Finality

Ejectment Complaint Claim:

KP attaches a certified remand order and summary judgment from prior state court as proof of “final adjudication.”

(Exhibits to Complaint, CFN 20240890448 and CFN 20250155101)

Deposition Conflict:

Perez admits (and public record confirms) that both remand and summary judgment were under appeal, subject to federal review, and did not reflect true finality.

(Deposition, 2022; see also Miami-Dade Book 34638 / Page 4242)

Conflict #8 – Ignorance of Federal Claims

Ejectment Complaint Claim:

Silent on existence of adversary proceedings, federal removals, or DOJ activity.

Deposition Conflict:

Perez confirms that his counsel communicated with Deutsche Bank's legal team, and that both parties were aware that litigation was not closed.

(Deposition, p. 60- 61, multiple lines; corroborated by adversary filings and removal records.)

Conflict #9 – Bona Fide Purchaser (BFP) Presumption

Ejectment Complaint Claim:

Implicitly asserts KP is a bona fide purchaser without notice of defects or disputes.

Deposition Conflict:

Perez's own words refute this — he testified to knowledge of:

Communication breakdowns between Mirabal and the bank,

Foreclosure defects,

Litigation pending before executing the contract or filing suit.

(Deposition, p. 26–32)

Conflict #10 – Title Cleanliness Misrepresentation

Ejectment Complaint Claim:

“Plaintiff acquired clean and marketable title through judicial sale.”

Deposition Conflict:

Perez knew that:

The title was under active litigation,

The assignment chain was defective,

The foreclosure judgment was the subject of multiple filings alleging fraud.

(Deposition and Record, 2022–2025)

APPENDIX E: INDEX OF CASES AFFECTED BY FRAUD

This Appendix lists all cases—state, bankruptcy, district, and appellate—impacted by the coordinated fraud scheme conducted by Deutsche Bank National Trust Company and KP Investments Miami, LLC. Each entry includes the court, case number, parties, and nature of the action. These proceedings are all connected by a fraudulent chain of title and are subject to vacatur under Rule 60(d)(3).

I. STATE COURT CASES (11th Judicial Circuit, Miami-Dade County)

1. Deutsche Bank v. Mirabal

Case No.: 2018-018704-CA-01

Judge(s): Originally Judge Bokor, later Judge Enriquez

Action: Foreclosure

Fraud Identified: False standing, lost note, void assignments, perjury, public record falsification

Status: Repeatedly contested, removed to federal court, then improperly remanded

Relief Requested: Vacatur of foreclosure judgment, public record nullification

2. KP Investments Miami, LLC v. Mirabal

Case No.: 2022-004706-CA-01

Judge: Judge Jason Dimitris

Action: Specific Performance

**Fraud Identified: Perjury in complaint, concealment of pending litigation,
coordinated misrepresentation with Deutsche Bank**

Status: Judgment entered; subject to appeal and removal history

**Relief Requested: Vacatur of judgment and nullification of KP's derivative
title claim**

3. KP Investments Miami, LLC v. Mirabal

Case No.: 2024-022769-CA-01

Judge: Judge Ariana Fajardo Orshan

Action: Ejectment

Fraud Identified: False assertions of uncontested title, omitted federal

litigation, conflicting deposition testimony

Status: Default judgment issued after procedural irregularities

Relief Requested: Vacatur of ejectment judgment, permanent bar against
dispossession

II. FEDERAL DISTRICT COURT (S.D. Florida)

4. Deutsche Bank v. Mirabal (Removed Foreclosure Case)

Case No.: 1:25-cv-20746-JEM

Origin: Removed from Case No. 2018-018704-CA-01

Action: Foreclosure (Removed)

Fraud Identified: Tainted record on removal, remanded in error based on
clerical misidentification

Status: Closed following erroneous remand

Relief Requested: Restoration of removal; vacatur of remand and
underlying foreclosure

5. Mirabal v. Deutsche Bank (Federal FCA Action)

Case No.: 1:25-cv-20010-PCH

Action: False Claims Act (Sealed)

Content: Alleging systemic fraud by Deutsche Bank and its agents

Status: Under seal pursuant to 31 U.S.C. § 3730(b)(2)

Relief Context: Record of fraud herein directly supports the core FCA claims

6. Bankruptcy Case – Chapter 13

Case No.: 23-20131-CLC

Judge: Judge Corali Lopez-Castro

Action: Chapter 13 Bankruptcy

Fraud Identified: Deutsche Bank's Proof of Claim included misrepresentations regarding possession, assignment, and pending litigation

Status: Closed; adversary appeals pending

Relief Requested: Retrospective vacatur of POC-based actions and plan

interference

7. Adversary Proceeding – Deutsche Bank

Case No.: 24-01418-CLC

Action: Complaint for Fraudulent Conveyance / Title Fraud

**Fraud Identified: Proof of Claim contradictions, title laundering via
bankruptcy**

Status: On appeal as Case No. 25-11183

Relief Requested: Vacatur of POC and all dependent rulings

8. Adversary Proceeding – KP Investments

Case No.: 24-01417-CLC

Action: Complaint for Fraud and Stay Violation

**Fraud Identified: Coordinated litigation to defeat automatic stay;
concealment of bankruptcy**

Status: On appeal as Case No. 25-11182

Relief Requested: Full vacatur and bar to KP litigation

III. ELEVENTH CIRCUIT COURT OF APPEALS

9. KP Investments Miami, LLC v. Mirabal

Appeal No.: 25-10858

Origin: 1:25-cv-20688-JEM (removal of KP case)

Status: Active

**Relief Requested: Dismissal of appeal and vacatur of all judgments based
on void foreclosure**

10. KP Investments Miami, LLC v. Mirabal

Appeal No.: 25-10862

Origin: 1:25-cv-20747-JEM (ejectment removal)

Status: Active

**Relief Requested: Vacatur based on procedural fraud and remand
manipulation**

11. In re: Mario Mirabal (Mandamus re: Clerk Error)

Appeal No.: 25-11120

Context: Petition to reverse erroneous remand in Deutsche case

Status: Active

Relief Requested: Recall of remand and appellate review

12. In re: Mario Mirabal (Adversary Appeal – KP)

Appeal No.: 25-11182

Context: KP adversary case in bankruptcy

Status: Active

**Relief Requested: Vacatur of POC-based rulings and coordination with
FCA oversight**

13. In re: Mario Mirabal (Adversary Appeal – Deutsche)

Appeal No.: 25-11183

Context: Deutsche Bank adversary appeal

Status: Active

Relief Requested: Global vacatur of claims derived from void title

14. In re: Mario Mirabal (Mandamus – FCA Docket Integrity)

Appeal No.: 25-11254

Context: Procedural obstruction and judicial integrity failures related to sealed FCA case

Status: Active

Relief Requested: Review and correction of compromised lower court conduct

IV. SUMMARY AND CONSOLIDATED RELIEF

The cases listed in this Appendix form a single web of fraud arising from a void foreclosure, fabricated assignments, false federal filings, and public record tampering. No ruling derived from this structure may lawfully survive.

Appellant respectfully asks this Court to:

Vacate and nullify the judgments and orders in each case listed;

Issue declaratory relief extinguishing all claims to title based on the fraudulent foreclosure;

Enjoin further litigation by the identified parties or successors;

Refer the matter to appropriate federal agencies for enforcement action.

Respectfully submitted,

May 13, 2025

A handwritten signature in black ink, appearing to read 'Mario Mirabal', with a long horizontal flourish extending to the right.

Pro Se Appellant

563 W. 49th Street

Miami Beach, FL 33140

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Unified List for All Related Federal Appeals

Pursuant to 11th Cir. R. 26.1-1 through 26.1-3, the undersigned certifies that the following individuals, entities, attorneys, and judges have an interest in the outcome of this appeal or are related to the underlying and parallel proceedings:

Relator / Appellant / Petitioner

– Mario Mirabal (Pro Se)

Opposing Parties / Appellees / Plaintiffs

– Deutsche Bank National Trust Company

– PHH Mortgage Corporation (servicer)

– KP Investments Miami, LLC

-- RAS LaVrar, LLC

Attorneys for KP Investments / Deutsche Bank

– John Cunill, Esq. – The Cunill Law Firm, PA

– Kenneth Damas – formerly of Adorno & Cunill, P.A.

– Mehwish A. Yousuf – Counsel for Deutsche Bank

-- Ari Newman Counsel for Deutsche Bank

-- Matthew Marks Counsel for Deutsche Bank

Presiding Judges in Related Federal District Court Cases

- Judge Jose E. Martinez (S.D. Fla.) – Cases: 1:25-cv-20747-JEM, 1:25-cv-20746-JEM
- Judge Paul C. Huck (S.D. Fla.) – Case: 1:25-cv-20010-PCH
- Judge Jacqueline Becerra (S.D. Fla., reassigned case) – Case: 1:25-cv-20011-JEM

State Court Judges in Underlying Litigation

- Judge Javier Enriquez – 2018-018704-CA-01 (Deutsche Bank)
- Judge Brinkley -- formerly assigned
- Judge Bokor -- formerly assigned
- Judge Jason Dimitris – 2022-004706-CA-01 (KP Investments, Specific Performance)
- Judge Ariana Fajardo Orshan – 2024-022769-CA-01 (KP Investments, Ejectment)
- Judge David Miller (formerly assigned in specific performance suit)
- Judge Corali Lopez-Castro – Bankruptcy Court (adversary proceeding dismissed)

Appellate Courts & Cases (11th Circuit)

- 25-10858 – KP v. Mirabal (District: 1:25-cv-20688-JEM)
- 25-10862 – KP v. Mirabal (District: 1:25-cv-20747-JEM)
- 25-11120 – In re: Mario Mirabal (Writ re: Judge Martinez/Orshan Remand Protective Filling)

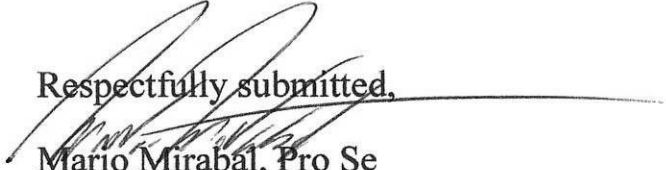
- 25-11182 – In re: Mario Mirabal (Second Writ – Protective Filing)
- 25-11183 – In re: Mario Mirabal (Writ re: Judge Huck and Case 1:25-cv-20010-PCH protective Filling)
- 25-11254 – In re: Mario Mirabal (Writ of Mandamus arising from Case No. 1:25-cv-20688-JEM Judge Jose E. Martinez)

State Appellate Court

- 3D2025-0540 – 3rd District Court of Appeal (FL) – Appeal of Orshan default judgment while under 11th District US Appeals Court jurisdiction

The undersigned affirms this list is complete and accurate to the best of his knowledge and will be updated as necessary.

Respectfully submitted,


Mario Mirabal, Pro Se

563 w 49 st Miami Beach Fl, 33140

solphax@gmail.com

786.479.6596

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2025, I caused a true and correct copy of
the foregoing:

**MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(d)(3)
BASED ON FRAUD UPON THE COURT**

Including all referenced appendices and supporting materials,

to be delivered to the Clerk of the United States Court of Appeals for the
Eleventh Circuit via USPS Delivery, and that a Clerk's Cover Letter was
included for proper docketing under the following related appeal numbers:

Appeal No. 25-10858

Appeal No. 25-10862

Appeal No. 25-11120

Appeal No. 25-11182

Appeal No. 25-11183

Appeal No. 25-11254

Further, I served notice of filing via U.S. Mail upon the following counsel of record for Appellees, with copy of the Clerk Cover Letter:

Counsel for Deutsche Bank National Trust Company

Tyrone A. Adras, Esq. C. Wade Bowden, Esq. Ari H. Newman, Esq.

Greenberg Traurig, P.A.

333 SE 2nd Avenue, Suite 4400

Miami, FL 33131

Matthew Marks, Esq.

Brock & Scott, PLLC

2001 NW 64th Street, Suite 130

Fort Lauderdale, FL 33309

Counsel for KP Investments Miami, LLC

John Cunill, Esq.

Adorno-Cunill & Damas, PL

1000 Brickell Avenue, Suite 720

Miami, Florida 33131

Kenneth M. Damas, Esq.

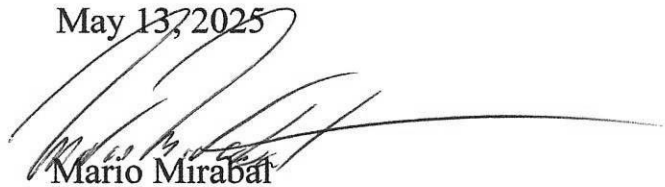
300 Sevilla Ave Ste 210
Coral Gables, FL 33134

Each recipient was served in connection with their role in the related lower court proceedings and as counsel of record in one or more consolidated appeals.

The full filing is available to all parties via the PACER system.

Respectfully submitted,

May 13, 2025

A handwritten signature in black ink, appearing to read 'Mario Mirabal', with a long horizontal flourish extending to the right.

Pro Se Appellant

563 W. 49th Street
Miami Beach, FL 33140

Clerk of Court
Case No. 25-11254-F





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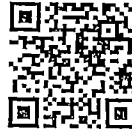
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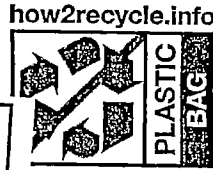


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EXHIBIT 8

Pooling & Servicing Agreement Violation & Inconsistency Index

IndyMac INDX Mortgage Loan Trust 2007-AR5

Purpose of this Index

This index highlights specific provisions of the Pooling & Servicing Agreement (“PSA”) governing the IndyMac INDX Mortgage Loan Trust 2007-AR5, dated July 1, 2007, and contrasts them with actual events in Plaintiff’s case.

By setting the PSA’s contractual rules side-by-side with the 2010 Stern Assignment and subsequent litigation history, the violations and inconsistencies become undeniable. This chart is designed as a quick, authoritative roadmap to the fraud.

Key Violations

1. PSA Section 2.01 – Conveyance of Mortgage Loans (PSA p.40; operative delivery sentence at p.47)

PSA Requirement: All mortgage loans must be conveyed into the Trust by the Closing Date, which is July 30, 2007 (PSA § 1.01, p. 18), with a limited five-business-day grace period for Delay-Delivery Mortgage Loans (PSA § 1.01 “Delay Delivery Mortgage Loans,” p. 20; § 2.01, p. 47). The Cut-off Date governing the selection of loans is July 1, 2007 (PSA § 1.01, p. 20).

Actual Events: The assignment is dated June 10, 2010 (executed by Erica Johnson-Seck) and was recorded June 30, 2010.

Violation: Assignment occurred nearly three years after the trust closing date.

Under New York trust law, late transfers are void ab initio.

Exhibit: 2010 Stern Assignment (Miami-Dade CFN 20100438138).

2. PSA Section 2.04 – Representations & Warranties of the Depositor (PSA p.54)

PSA Requirement: Depositor warrants that as of the Closing Date the Depositor had good title to the Mortgage Loans and that each loan was properly transferred.

Actual Events: Plaintiff's loan was not in the trust in 2007; a fabricated assignment was added in 2010.

Violation: Breach of Depositor's Closing-Date title warranty; a 2010 assignment cannot cure missing Closing-Date title.

Exhibit: Defendant's Rule 1.540(b) Motion, pp. 2–3.

3. PSA Section 2.05 – Delivery of Opinion of Counsel in Connection with Substitutions (PSA pp.54–55)

PSA Requirement: Post-Closing substitutions require an Opinion of Counsel to protect REMIC/tax compliance.

Actual Events: No Opinion of Counsel accompanied the 2010 assignment.

Violation: The 2010 assignment violated the PSA's substitution mechanics and REMIC safeguards; no legal opinion validating a Qualified Substitution.

Exhibit: Affidavit of Forensic Facts (Judge Enriquez).

4. PSA Section 2.07 – REMIC Matters (PSA p.55)

PSA Requirement: "The 'Startup Day' ... shall be the Closing Date," fixing

REMIC timing at Closing.

Actual Events: Assignment Assignment execution: June 10, 2010 → 1,046 days
Assignment recording: June 30, 2010 → 1,066 days

Violation: Any post-Closing change must follow the PSA's exclusive remedies (repurchase/substitution with Opinion of Counsel), not a 2010 assignment.

Exhibit: Rule 1.540(b) Motion, with PSA cites.

5. PSA Timing Controls — Delivery, Certification, and Recording-Return Limits (precise cites)

PSA Requirement:

- Delivery by Closing + five-business-day tail: “By the Closing Date ... deliver the Mortgage File ... (Delay-Delivery within five Business Days)” (§ 2.01, p. 47; § 1.01 ‘Delay Delivery Mortgage Loans,’ p. 20).
- Trustee certifications: “By the thirtieth day ... Delay Delivery Certification” and “By the ninetieth day ... Final Certification” (§ 2.02, p. 51).
- Recording-return outer limits (non-MERS): where recorder-stamped originals have not yet returned from the recording office, delivery of the recorded originals (or certified copies) not later than one year following the Closing Date and, in any event, within 720 days following the Closing Date; title commitment/binder initially, policy within 120 days (§ 2.02, p. 51).
- MERS indication (administrative, not a cure): the Seller shall cause the MERS® System to indicate assignment to the Trustee in accordance with this Agreement (§ 2.01, p. 48)—a registry update that presupposes a valid PSA transfer/delivery; it does not substitute for § 2.01 delivery/§ 2.02 certifications.
- Exclusive cure: for any § 2.01 failure, the Seller's sole remedy obligation is

repurchase or substitution (§ 2.03, “sole remedy” sentence at p. 52; cross-reference at p. 49), and substitutions require Opinion of Counsel (§ 2.05, pp. 54–55).

Actual Events: Assignment recorded June 30, 2010.

Violation: Outside PSA delivery/certification windows and beyond the recording-return outer limit; moreover, a 2010 assignment is not a PSA-authorized cure (no § 2.03 repurchase/substitution and no § 2.05 opinion).

Note: These timing controls operate within—and are subordinate to—the REMIC Startup Day = Closing requirement (§ 2.07, p. 55); nothing in § 2.02 authorizes acceptance of a new loan after the Closing Date.

Exhibit: 2010 Stern Assignment; PSA §§ 1.01 (p. 20), 2.01 (p. 47–48), 2.02 (p. 51), 2.03 (pp. 49, 52), 2.05 (pp. 54–55).

6. PSA Article III – Servicing of Mortgage Loans (begins at PSA p.56)

PSA Requirement: Servicer must service in accordance with the PSA; it cannot insert loans post-Closing contrary to PSA delivery/timing/cure provisions.

Actual Events: PHH enforced foreclosure relying on the 2010 fabricated assignment.

Violation: Breach of servicing obligations by enforcing a void instrument.

Exhibit: PHH litigation filings (state and federal).

7. PSA § 10.03 — Governing Law (New York) (PSA p.100; operative uppercase clause at p.107)

PSA Requirement: Agreement governed by the substantive laws of the State

of New York.

Actual Events: Under New York Estates, Powers & Trusts Law § 7-2.4, acts in contravention of the trust instrument are void.

Violation: The 2010 assignment is void from inception, not voidable, as to the Trust.

Exhibit: PSA Governing Law Clause (§ 10.03).

Summary of Violations

Late transfer nearly 3 years after Closing.

Breach of Depositor's Closing-Date title warranty.

REMIC timing violation (Startup Day = Closing); delivery/certifications missed; recording-return outer limit exceeded.

No Opinion of Counsel provided for any post-Closing substitution.

Servicer misconduct by enforcing a void assignment.

Under New York trust law, the act is void, not voidable.

Cross-Referenced Exhibits

Ex. A: 2010 Stern Assignment (Miami-Dade CFN 20100438138).

Ex. B: PSA Excerpt p.53 (540/720-day deadlines).

Ex. C: Defendant's Rule 1.540(b) Motion (pp.2–3).

Ex. D: Affidavit of Forensic Facts (Judge Enriquez case).

Ex. E: Dismissal with Prejudice (Judge Bokor, Mar. 5, 2020).

Supplemental Navigation Anchors (for the Court)

(PSA page references below are to the PSA)

SEC/EDGAR Header — Cover page (EX-4.1 header), p. 1

Table of Contents — p. 3

PSA Start — opening recital “This Pooling and Servicing Agreement...”, p. 8

Article I — Definitions — p. 7

§ 1.01 — Definitions — p. 7

Article II — Conveyance of Mortgage Loans — p. 40

§ 2.01 — Conveyance of Mortgage Loans — p. 40

§ 2.02 — Acceptance by the Trustee — p. 43

§ 2.03 — Reps, Warranties & Covenants of Seller/Servicer — p. 45

§ 2.04 — Reps & Warranties of the Depositor — p. 47

§ 2.05 — Opinion of Counsel for Substitutions — p. 47

§ 2.06 — Execution and Delivery of Certificates — p. 48

MERS Designation Obligations (within § 2.x) — § 2.01(c)(ii), pp. 47–48

Article VIII — Concerning the Trustee — p. 86

§ 8.01 — Duties of the Trustee — p. 86

§ 10.03 — Governing Law (New York) — p. 100

REMIC — Elections & Tax Administration —

- Preliminary Statement REMIC elections (overview) — p. 8
- § 2.07 — REMIC Matters — p. 48
- § 8.11 — Tax Matters (administration & filings) — p. 92

Declaratory Appendix

Anchors & Proof (PSA-native pages + exact language)

Article I — Definitions (PSA p. 7)

§ 1.01 — Definitions (PSA p. 7+)

Quotes (timing primitives):

“Cut-off Date: July 1, 2007.” (PSA p. 20).

“Closing Date: July 30, 2007.” (PSA p. 18).

“Delay Delivery Mortgage Loans: ... The Depositor shall deliver the Mortgage Files to the Trustee:

(A) for at least 70% ... not later than the Closing Date, and

(B) for the remaining 30% ... not later than five Business Days following the Closing Date.” (PSA p. 20).

Revelation (PSA): The PSA itself fixes when a loan must be in-trust: Closing Date (with only a five-business-day carve-out for the remainder). Anything later falls outside § 2.01 delivery and triggers the PSA's cure mechanics (§§ 2.03/2.05).

Article II — Conveyance of Mortgage Loans (PSA p. 40)

§ 2.01 — Conveyance of Mortgage Loans (PSA p. 40; operative delivery sentence at p. 47)

Quote (delivery by Closing Date):

“By the Closing Date, the Seller shall deliver to the Depositor or, at the Depositor's direction, to the Trustee or other designee of the Depositor, the Mortgage File for each Mortgage Loan ... (except that, in the case of Mortgage Loans that are Delay Delivery Mortgage Loans, such delivery may take place within five Business Days of the Closing Date)” (PSA p. 47).

Revelation (PSA): § 2.01 requires actual delivery of each Mortgage File by the Closing Date (with a very narrow five-day tail). A 2010 paper is not § 2.01 delivery.

Cross-Reference Revelation — § 2.02 / § 2.03 / § 2.05:

§ 2.02 imposes 30/90-day certifications on delivery.

§ 2.03 makes repurchase/substitution the sole remedy for § 2.01 failures.

§ 2.05 requires Opinion of Counsel for substitutions affecting tax/REMIC status.

Collectively, the PSA leaves no role for a years-late assignment as a cure.

MERS (within § 2.01) (PSA pp. 47–48)

Quote (registry step after real transfer):

“In addition, in connection with the assignment of any MERS Mortgage Loan, the Seller agrees that it will cause, at the Seller’s expense, the MERS® System to indicate that the Mortgage Loans ... have been assigned by the Seller to the Trustee in accordance with this Agreement for the benefit of the Certificateholders” (PSA p. 48).

Revelation (PSA): The PSA treats MERS as an administrative indication that follows a valid PSA transfer/delivery. A later MERS change cannot deliver Mortgage Files, satisfy § 2.02 certifications, or stand in for repurchase/substitution + Opinion of Counsel.

Cross-Reference Revelation — § 2.01 / § 2.02 / § 2.03 / § 2.05: The MERS clause presumes § 2.01 delivery. If § 2.01 wasn’t satisfied on time, §§ 2.03/2.05 govern—not retroactive registry edits.

§ 2.02 — Acceptance by the Trustee (PSA p. 43; operative text at p. 51)

Quotes (certification clocks):

“By the thirtieth day after the Closing Date ... the Trustee shall deliver ... a Delay Delivery Certification”

“By the ninetieth day after the Closing Date ... the Trustee shall deliver ... a

Final Certification” (both PSA p. 51).

Revelation (PSA): The PSA hard-wires 30/90-day controls. When a loan misses these checkpoints, the PSA channels the fix to cure provisions—not “paper later.”

Cross-Reference Revelation — § 2.03/§ 2.05: The PSA’s only fix for § 2.01/ § 2.02 failures is repurchase or Qualified Substitution (with Opinion of Counsel where applicable). There is no authorization for a belated assignment as a cure.

§ 2.03 — Reps, Warranties & Covenants of the Seller/Servicer (PSA p. 45; remedy sentence at p. 52)

Quote (exclusive remedy clause):

“The obligation of the Seller to substitute for or to purchase any Mortgage Loan that does not meet the requirements of Section 2.01 shall constitute the sole remedy respecting the defect available to the Trustee, the Depositor, and any Certificateholder against the Seller.” (PSA p. 52).

Quote (cross-referenced cure for Delay-Delivery):

“(A) repurchase the Delay Delivery Mortgage Loan or (B) substitute the Substitute Mortgage Loan ... in the manner and subject to the conditions in Section 2.03” (PSA p. 49).

Revelation (PSA): The PSA’s sole remedy for a § 2.01 failure is repurchase/substitution. A “we fixed it in 2010 by assignment” theory is

incompatible with the PSA's remedy clause.

Cross-Reference Revelation — § 2.01/§ 2.02/§ 2.05: Missed § 2.01 delivery and § 2.02 certifications are resolved only via § 2.03/§ 2.05 (not assignment), with Opinion of Counsel when substituting.

§ 2.04 — Reps & Warranties of the Depositor (PSA p. 47; warranty sentence at p. 54)

Quote (title at Closing):

“The Depositor represents and warrants ... that as of the Closing Date ... the Depositor had good title to the Mortgage Loans and the Mortgage Notes were subject to no offsets, defenses, or counterclaims.” (PSA p. 54).

Revelation (PSA): The PSA requires good title at Closing. If the chain first manifests via a 2010 instrument, § 2.04's “as of the Closing Date” warranty is not satisfied; standing at inception fails by the PSA's own terms.

Cross-Reference Revelation — § 2.01/§ 2.03/§ 2.05: A failure of title at Closing is a § 2.01 failure; the PSA's only corrective mechanisms are § 2.03/§ 2.05—not a late assignment.

§ 2.05 — Delivery of Opinion of Counsel in Connection with Substitutions (PSA p. 47)

Quote (section command):

“Section 2.05 Delivery of Opinion of Counsel in Connection with Substitutions.” (PSA p. 47).

Revelation (PSA): Post-Closing “additions” occur only as Qualified Substitutions, backed by Opinion of Counsel to preserve tax/REMIC status. A 2010 assignment without such an opinion is facially non-compliant with the PSA.

Cross-Reference Revelation — § 2.01/§ 2.02/§ 2.03: When a loan wasn’t delivered/certified within PSA windows, § 2.03 demands substitution/repurchase—and § 2.05 imposes the opinion requirement. Again: no text authorizes assignment as a cure.

§ 2.06 — Execution and Delivery of Certificates (PSA p. 48; operative recital at p. 55)

Quote (trust corpus finalized):

“The Trustee ... has executed and delivered ... the Certificates ... evidencing ... the entire ownership of the Trust Fund.” (PSA p. 55).

Revelation (PSA): Certificates evidence a completed trust corpus; assets were set. Any post-Closing alteration must follow the PSA’s substitution/repurchase mechanics—not back-dated paper.

Cross-Reference Revelation — § 2.03/§ 2.05: Post-Closing change = Qualified Substitution with Opinion of Counsel (as applicable). That’s the sole, contract-authorized path.

Article VIII — Concerning the Trustee (PSA p. 86)

§ 8.01 — Duties of the Trustee (PSA p. 86; operative sentence at p. 93)

Quote (limited powers):

“[The Trustee] shall undertake to perform such duties and only such duties as are specifically set forth in this Agreement.” (PSA p. 93).

Revelation (PSA): The Trustee cannot accept a non-PSA “cure.” Its powers are limited to the PSA’s exclusive remedies (e.g., §§ 2.03/2.05), not late assignments.

Governing Law — § 10.03 (New York) (PSA p. 100; uppercase operative text at p. 107)

Quote (governing law):

“THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK ...” (PSA p. 107).

Revelation (PSA): Under New York trust law, acts in contravention of a trust instrument are void. Where the PSA prescribes delivery by Closing and exclusive cures (repurchase/substitution with opinion), a 2010 assignment is void as to the trust.

Cross-Reference Revelation — §§ 2.01/2.02/2.03/2.05: The PSA’s text sets

timing and cures; New York law enforces those limits by nullifying contrary acts.

REMIC — Elections & Administration

§ 2.07 — REMIC Matters (PSA p. 48; operative sentence at p. 55)

Quote (Startup Day fixed):

“The ‘Startup Day’ ... shall be the Closing Date.” (PSA p. 55).

Revelation (PSA): REMIC timing is locked to Closing; later changes must honor the PSA’s substitution regime with Opinion of Counsel. A 2010 assignment is not that regime.

Schedules & Exhibits index page — roman numeral iv

Quote (locator): “SCHEDULES ... EXHIBITS” (Index page, roman iv).

Revelation (PSA): This points the Court to the PSA’s Delay Delivery Certification (Ex. G-2) and Final Certification (Ex. H) referenced by § 2.02—proof the PSA polices timing contemporaneously, not years later.

EXHIBIT 9

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA02

JUDGE: Lourdes Simon

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS

THIS CAUSE came before the Court on August 28, 2025, on Plaintiff's Motion for Sanctions pursuant to Fla. R. Civ. P. 1.380 [D.E. 69] ("Motion") Plaintiff was represented by counsel, John Cunill, Esq. The Defendant, Mario Mirabal, refused to appear, despite being notified of the hearing. The Court, having reviewed the Motion, the record, and being otherwise fully advised in the premises, finds as follows:

1. On June 18, 2025, this Court entered an Order compelling Defendant, Mario Mirabal, to appear for deposition on July 22, 2025, at 10:00 A.M. at the Law Offices of Adorno & Cunill, PL, 1000 Brickell Avenue, Suite 1100, Miami, Florida 33131.
2. Defendant failed to appear at his court ordered deposition.
3. A Certificate of Non-Appearance was issued by the court reporter confirming Defendant's failure to attend.
4. Defendant's failure to appear constitutes a willful violation of this Court's June 18, 2025, Order and is sanctionable under Fla. R. Civ. P. 1.380(d).

Accordingly, it is **ORDERED AND ADJUDGED**:

A. Plaintiff's Motion for Sanctions is GRANTED.

B. Defendant is Ordered to appear in-person for deposition at the Law Offices of Adorno & Cunill, PL, 1000 Brickell Avenue, Suite 1100, Miami, Florida 33131, on September 10, 2025, at 10:00 A.M.

C. Defendant is expressly cautioned that failure to comply with this Order may result in escalating sanctions, including striking of pleadings and entry of default judgment pursuant to Fla. R. Civ. P. 1.380.

D. The Court reserves on monetary sanctions and further sanctions.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 4th day of September, 2025.


2024-022769-CA-01 09-04-2025 12:28 PM

2024-022769-CA-01 09-04-2025 12:28 PM

Hon. Lourdes Simon

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

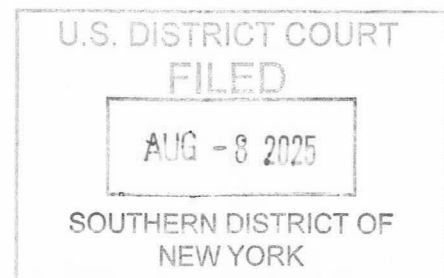
EXHIBIT 10

CIVIL COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER 42
U.S.C. § 1983, REQUEST FOR DECLARATORY AND INJUNCTIVE
RELIEF, AND [PROPOSED] PRELIMINARY INJUNCTION & ORDER
TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mario Mirabal,

Plaintiff,



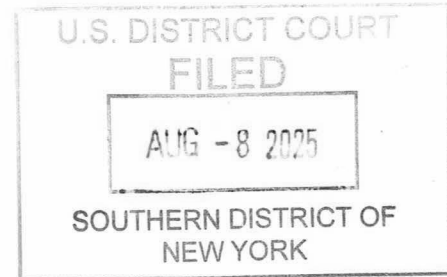
v.

Deutsche Bank National Trust Company; PHH Mortgage Corporation; KP
Investments Miami, LLC; Law Offices Of Adorno & Cunill; John Cunill,
Esq.; Amarillis Adorno, Esq.; Damas Law; Kenneth Damas, Esq.;
Quintairos, Prieto, Wood & Boyer, P.A.; Mehwish A. Yousuf, Esq.;
Greenberg Traurig LLP; Ari Newman, Esq.; Beth A. Norrow, Esq; Brock and
Scott PLLC Matthew Marks, Esq.; Various Title Agents/Closers (Names to
be determined),

CIVIL RICO COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mario Mirabal,
Plaintiff,



v.

Deutsche Bank National Trust Company; PHH Mortgage Corporation; KP Investments Miami, LLC; Law Offices Of Adorno & Cunill; John Cunill, Esq.; Amarillis Adorno, Esq.; Damas Law; Kenneth Damas, Esq.; Quintairos, Prieto, Wood & Boyer, P.A.; Mehwish A. Yousuf, Esq.; Greenberg Traurig LLP; Ari Newman, Esq.; Beth A. Norrow, Esq; Brock and Scott PLLC Matthew Marks, Esq.; Various Title Agents/Closers (Names to be determined),

Defendants.

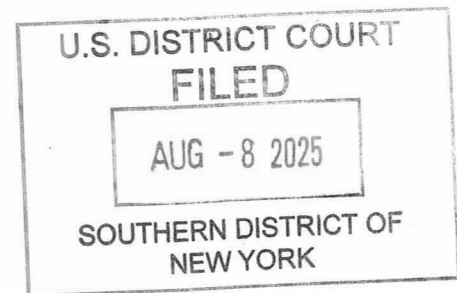
Case No.: _____

CIVIL RICO COMPLAINT UNDER 18 U.S.C. §§ 1962(c) & (d) WITH
REQUEST FOR DECLARATORY RELIEF, PERMANENT INJUNCTION,
[PROPOSED] PRELIMINARY INJUNCTION, AND [PROPOSED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mario Mirabal,
Plaintiff,

v.



Deutsche Bank National Trust Company; PHH Mortgage Corporation; KP
Investments Miami, LLC; Law Offices Of Adorno & Cunill; John Cunill,
Esq.; Amarillis Adorno, Esq.; Damas Law; Kenneth Damas, Esq.;
Quintairos, Prieto, Wood & Boyer, P.A.; Mehwish A. Yousuf, Esq.;
Greenberg Traurig LLP; Ari Newman, Esq.; Beth A. Norrow, Esq; Brock and
Scott PLLC Matthew Marks, Esq.; Various Title Agents/Closers (Names to
be determined),

Defendants.

Case No.: _____

Filed by:

Mario Mirabal, Pro Se

EXHIBIT 11

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION

KP INVESTMENTS MIAMI, LLC,

CASE NO.: 2024-022769-CA-01

Plaintiff,

JUDGE.: SIMON

v.

MARIO MIRABAL,
Defendant.

_____ /

**PLAINTIFF'S MOTION TO DECLARE DEFENDANT, MARIO MIRABAL A
VEXATIOUS LITIGANT AND REQUEST FOR SECURITY BOND**

COMES NOW, Plaintiff, KP Investments Miami, LLC ("Plaintiff"), by and through undersigned counsel, and pursuant to Fla. Stat. § 68.093, hereby moves this Court to declare Defendant, Mario Mirabal ("Mirabal" or "Defendant"), a vexatious litigant, and in support states as follows:

BACKGROUND

This action arises from Plaintiff's efforts to obtain possession of the real property located at 563 W. 49th Street, Miami Beach, Florida 33140 (the "Property"). Plaintiff, KP Investments Miami, LLC ("KP Investments"), is the rightful owner of the Property by virtue of a Warranty Deed recorded on November 25, 2024.

Despite Plaintiff's clear legal title, Mirabal has refused to vacate the Property, forcing Plaintiff to bring the instant ejectment action. As of today's date, Mirabal has not filed an answer to the Complaint for Ejectment, despite being ordered to do so and has not

provided one scintilla of evidence that he has any legal tile to the property. Mirabal bases his claim to the property on loan documents that he was not in privity to nor was he a borrower under, this has been previously decided by the Courts. Mirabal continually violates this Court's orders, disparages the presiding Judge and has not appeared for his court ordered deposition twice making a mockery of the court in way that any practicing attorney would be called up to the Florida Bar for.

Defendant's actions are an attempt to live in the property free and cause Plaintiff unnecessary delays, Mirabal has engaged in the unlicensed practice of law and a pattern of obstruction by filing unmeritorious pleadings, frivolous requests for relief, and repeatedly filing pleadings, that have been the subject of previous rulings by the court in the same action; while simultaneously engaging in other tactics that are frivolous across multiple courts, including this Court, the Third District Court of Appeals, the Eleventh Circuit Court of Appeals, the U.S. District Courts for the Southern District of Florida and U.S. District Courts for the Southern District of New York, and the U.S. Bankruptcy Court for the Southern District of Florida.

Mirabal's filings personally attack the Judiciary, undersigned counsel and recycle the same baseless allegations of fraud, judicial bias, and constitutional violations, which have been previously dismissed, denied, or otherwise resolved against Mirabal. Defendant has filed at least nineteen (19) pro se actions within the past seven years in State, Federal, Bankruptcy, State and Federal Appellate Courts, and the Florida State Supreme Court, these include but are not limited to the following cases¹:

¹ Dispositions are available upon request; however, no Court has issued an order depriving this Court of jurisdiction nor is there a stay in this action ordered.

Mirabal v. Deutsche Bank National Trust Co., Case No. 1:25-cv-07423-JPC, U.S. District Court (S.D.N.Y.)

Mirabal v. Deutsche Bank National Trust Co., Case No. 1:25-cv-20010-PCH, U.S. District Court (S.D. Fla)

Mirabal v. KP Investments Miami, LLC, Case No. 1:25-cv-20011-JEM, U.S. District Court (S.D. Fla)

Mirabal v. Deutsche Bank National Trust Co., Case No. 24-01418-CLC, U.S. Bankruptcy Court (S.D. Fla)

Mirabal v. KP Investments Miami, LLC, Case No. 24-01419-CLC, U.S. Bankruptcy Court (S.D. Fla)

In re: Mario Mirabal, Case No. 23-20131-CLC, U.S. Bankruptcy Court (S.D. Fla)

KP Investments Miami, LLC v. Mirabal, Case No. 25-10858, United States Court of Appeals for the Eleventh Circuit.

KP Investments Miami, LLC v. Mirabal, Case No. 25-10862, United States Court of Appeals for the Eleventh Circuit.

In re: Mario Mirabal, Case No. 25-11120, United States Court of Appeals for the Eleventh Circuit.

Deutsche Bank National Trust Co. v. Mirabal, Case No. 25-11182, United States Court of Appeals for the Eleventh Circuit.

Mirabal v. Deutsche Bank National Trust Co., Case No. 25-11183, United States Court of Appeals for the Eleventh Circuit.

In re: Mario Mirabal, Case No. 25-11752, United States Court of Appeals for the Eleventh Circuit.

Mario Mirabal v. KP Investments Miami, LLC, Case No. 3D2025-1487, District Court of Appeal of Florida, Third District

Mario Mirabal v. KP Investments Miami, LLC, Case No. 3D2025-0540, District Court of Appeal of Florida, Third District

Mario Mirabal v. KP Investments Miami, LLC, Case No. 3D2025-1103, District Court of Appeal of Florida, Third District

Mario Mirabal v. KP Investments Miami, LLC, Case No. SC2025-1325, Supreme Court of Florida

KP Investments Miami, LLC v. Mirabal, Case No. 1:25-cv-20688-JEM, U.S. District Court (S.D. Fla)

Deutsche Bank National Trust Co. v. Mirabal, Case No. 1:25-cv-20746-JEM, U.S. District Court (S.D. Fla)

KP Investments Miami, LLC v. Mirabal, Case No. 1:25-cv-20747-RAR, U.S. District Court (S.D. Fla)

Defendant's conduct demonstrates a clear pattern of abuse that meets the definition of a vexatious litigant under Fla. Stat. § 68.093.

LEGAL ARGUMENT

Under Fla. Stat. § 68.093, a “vexatious litigant” is defined as a person who, in the immediately preceding seven-year period, has commenced, prosecuted, or maintained at least five pro se actions, other than in small claims court, that have been finally and adversely determined against such person, or who repeatedly relitigates or attempts to relitigate the validity of the same issues against the same parties. Defendant meets this statutory definition. as Defendant has filed multiple pro-se actions against Plaintiff and third parties arising from the same claims to possession of property action nearly all of which have been dismissed, denied, or otherwise resolved adversely to him.

This Court has the authority to deem Defendant a vexatious litigant and prohibit him from pro se filings in the judicial circuit without leave and the furnishing of security. *See Brown v. Miami-Dade Cnty.*, 319 So. 3d 81 (Fla. 3d DCA 2021). In determining whether or not to restrict a litigant's future access to the courts, a court should consider the following factors: (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, including whether the litigant has an objective good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has

caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties. *See Lomax v. Reynolds*, 119 So. 3d 562 (Fla. 3d DCA 2013). In applying the factors outlined by the Third District Court of Appeals in *Lomax v. Reynolds*, Defendant should be declared a vexatious litigant. First, Defendant's litigation history demonstrates a consistent pattern of vexatious, harassing, and duplicative lawsuits across state, federal, and bankruptcy courts, all arising from the same underlying property dispute. Second, Defendant lacks any objective good faith expectation of prevailing, as the courts have repeatedly and uniformly rejected his claims. Third, Defendant proceeds pro-se, without counsel, and has used that status to inundate the courts with meritless pleadings that would never be filed by a licensed attorney. Fourth, Defendant's conduct has imposed needless expense upon Plaintiff and placed a substantial burden on this Court and other tribunals forced to address repetitive and frivolous filings. Finally, lesser sanctions have proven inadequate, as Defendant has ignored this Court's rulings and continues to relitigate matters already decided. Accordingly, under *Lomax v. Reynolds* and Fla. Stat. § 68.093, Defendant should be declared a vexatious litigant and subjected to the statutory remedies to protect Plaintiff and conserve judicial resources.

CONCLUSION

The Defendant's extensive litigation history consisting of at least nineteen adverse or duplicative cases falls within the statutory definition of a vexatious litigant under Fla. Stat. § 68.093 and warrants the imposition of security requirements and prefiling restrictions to protect both Plaintiff and the Court from further abuse. Here the Court's intervention is necessary to protect Plaintiff and to preserve judicial resources.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order: Declaring Defendant, Mario Mirabal, a vexatious litigant pursuant to Fla. Stat. § 68.093, Requiring Defendant to furnish security for costs as a condition of maintaining further filings; Prohibiting Defendant from filing new motions or pleadings in this action without prior leave of Court; Deny all other of Defendant's pending motions Denied, and Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 10 day of September, 2025.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September 2025, a true and correct copy was served to the Defendant, Mario Mirabal, by e-filing in accordance with the Florida Rules of Judicial Administration. Additionally, a copy was sent via email to the Defendant's email address at: solphax@gmail.com.

/s/ John Cunill

John Cunill

Attorney for Plaintiff

Florida Bar Number: 101733

Law Offices of Adorno & Cunill, PL

1000 Brickell Ave. Ste. 1100

Miami, FL 33131

Telephone: (305) 381-9999

Fax: (305) 381-9898

E-Mail: john@acfirm.com

EXHIBIT 12

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO.: 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL,

Defendant.

_____ /

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION TO
DECLARE DEFENDANT A VEXATIOUS LITIGANT AND REQUEST
FOR SECURITY BOND, AND NOTICE OF FEDERAL CONFLICT AND
DISQUALIFICATION

Defendant, Mario Mirabal, appearing pro se, respectfully moves this Court to strike Plaintiff's Motion to Declare Defendant a Vexatious Litigant and Request for Security Bond (Filing #231282076), filed on September 10, 2025. In support thereof, Defendant states:

I. PENDING MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL

On September 9, 2025, Defendant filed a Motion to Disqualify Attorney John

Cunill and his law firm, The Law Offices of Adorno & Cunill, from further participation in this proceeding.

The motion establishes that Mr. Cunill and his law firm are named Defendants in three active federal civil actions filed in the United States District Court for the Southern District of New York, each arising from the same factual and legal controversies underlying this case:

1:25-cv-07419 (RICO Action)

1:25-cv-07418 (42 U.S.C. § 1983 Civil Rights Action)

1:25-cv-07423 (Federal Collateral Attack on Void Judgment)

The conflict is not abstract; it is immediate and direct. Mr. Cunill, while actively named as a Defendant in those actions — and on formal notice of their pendency through service-related communications and eFiling records — continues to advocate in this Court as though no conflict exists, he continues to act as Plaintiff's counsel in this matter — including initiating motions and seeking adverse rulings against the undersigned.

Until the Court resolves the pending disqualification motion, the continued appearance and filings by Mr. Cunill are procedurally improper and materially prejudicial.

II. MOTION IS PROCEDURALLY DEFECTIVE AND RETALIATORY

Plaintiff's motion seeks to brand Defendant as a "vexatious litigant" and impose a monetary bond requirement, immediately after Defendant initiated federal litigation against both Plaintiff's counsel and this Court.

The filing:

Comes from a party with no current ethical or procedural standing

Is retaliatory in nature, timed to coincide with the exposure of documented fraud, procedural irregularities, and constitutional violations

Improperly seeks to chill access to the courts at a time when Defendant is actively engaged in federally protected proceedings

The motion should be summarily struck as it is:

Brought by an attorney currently subject to disqualification for conflict of interest

Filed in violation of basic ethical obligations under the Rules Regulating The Florida Bar, including Rule 4-1.7 (Conflict of Interest)

III. JURISDICTIONAL AND FEDERAL CONFLICT

The presiding judicial officer in this case, the Honorable Judge Lourdes Simon, is herself named in the three federal cases identified above.

As such, any ruling on the disqualification of her co-defendant raises substantial questions of jurisdictional propriety, judicial neutrality, and vertical conflict with federal oversight.

These circumstances are not hypothetical. They implicate the authority of this Court to rule on motions brought by and against parties who are currently under federal review for constitutional violations and fraud upon the court.

While no disrespect is intended to this Court, any adjudication of the disqualification motion — or motions initiated by Mr. Cunill — must be approached with the utmost caution. Until these threshold issues are resolved, no adverse action against the Defendant should be entertained.

IV. PRESERVATION OF FEDERAL RIGHTS

Defendant expressly reserves all rights and objections under applicable federal law, including pending constitutional, statutory, and sealed oversight proceedings, and respectfully places the Court on notice that the appearance of retaliatory litigation tactics — including the misuse of “vexatious litigant” frameworks — is being actively reviewed and documented.

Any attempt to proceed on this motion, prior to disqualification resolution, may result in substantial due process violations and would constitute a

chilling effect on protected filings.

The public record must reflect that any such filings were opposed on jurisdictional, ethical, and constitutional grounds.

V. RELIEF REQUESTED

WHEREFORE, Defendant respectfully requests that the Court:

STRIKE Plaintiff's Motion to Declare Defendant a Vexatious Litigant and Request for Security Bond as procedurally defective and ethically impermissible;

Take no action on any motion filed by Attorney John Cunill or his law firm until the Court rules on the pending Motion to Disqualify;

Refrain from hearing, calendaring, or issuing any ruling in this matter until the jurisdictional conflict arising from multiple active federal cases is resolved;

Acknowledge and preserve the procedural integrity of the record for future appellate and federal review.

Respectfully submitted,

Mario Mirabal

Pro Se Defendant

563 W 49 ST

MIAMI BEACH FL 33140

SOLPHAX@GMAIL.COM

Dated: September 10, 2025

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC, a
Florida Limited Liability Company,

Case No.: 2024-022769-CA-01

Plaintiff,

Vs

Judge.: Lourdes Simon

MARIO MIRABAL
and all those in possession

Defendant.

_____ /

NOTICE OF HEARING

NOTICE IS GIVEN that a hearing on Plaintiff's Motion to Declare Defendant, Mario Mirabal A Vexatious Litigant and Request for Security Bond has been set for October 14, 2025, at 9:00 a.m. or as soon after that time as the docket permits, the matter will be heard in front of the Honorable Lourdes Simon, via zoom link to be provided to all parties on the service list.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2025, a true and correct copy of the Plaintiff's Motion to Declare Defendant, Mario Mirabal A Vexatious Litigant and Request for Security Bond was served to the Defendant, Mario Mirabal, by e-filing in accordance with the Florida Rules of Judicial Administration. Additionally, a copy was sent via email to the Defendant's email address at: solphax@gmail.com.

/s/ John Cunill

John Cunill

Attorney for Plaintiff

Florida Bar Number: 101733

Law Offices of Adorno & Cunill, PL

1000 Brickell Ave. Ste. 1100

Miami, FL 33131

Telephone: (305) 381-9999

Fax: (305) 381-9898

E-Mail: john@acfirm.com

Americans with Disabilities Act (ADA)

If you qualify under the Americans with Disabilities Act (ADA) and need assistance, please visit the Eleventh Judicial Circuit of Florida or you may contact the ADA Coordinator at: E-mail: ADA Coordinator at ADA@jud11.flcourts.org; Voice Mail #: 305-349-7175; TDD #: 305-349- 7174; Fax #: 305-349-7355. If you are hearing or voice impaired, please call 711 or 1-800-955-8771 for the Florida Relay Service.

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO.: 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL,

Defendant.

DEFENDANT’S EMERGENCY MOTION TO STAY PROCEEDINGS,
STRIKE CONFLICTED COUNSEL, AND RECOGNIZE FEDERAL
DIVESTITURE

COMES NOW, Defendant Mario Mirabal, pro se, and respectfully moves this Court for an emergency order staying all proceedings in this case, striking conflicted counsel from the record, and acknowledging divestiture of jurisdiction. In support thereof, Defendant states:

I. BACKGROUND

On September 2, 2025, Defendant filed a Petition to Invoke All Writs

Jurisdiction in the Florida Supreme Court, Case No. SC2025-1325, requesting emergency supervisory relief to halt unlawful state court actions taken by disqualified judges and conflicted parties.

On September 8, 2025, Defendant filed three federal civil complaints in the United States District Court for the Southern District of New York:

Case No. 1:25-cv-07418 (Civil Rights – § 1983)

Case No. 1:25-cv-07419 (Civil RICO)

Case No. 1:25-cv-07423 (Federal Collateral Attack on Void Judgment)

Plaintiff KP Investments Miami, LLC and its lead counsel (IN THIS CASE) John Cunill, Esq., , are all named defendants in these SDNY actions.

Despite these conflicts, on September 15, 2025, Mr. Cunill unilaterally scheduled a hearing on Plaintiff's Motion to Declare Defendant a Vexatious Litigant and Request for Security Bond, now calendared before this Court for October 14, 2025, before Judge Lourdes Simon.

II. GROUNDS FOR STAY, STRIKE, AND DIVESTITURE

A. Federal Proceedings Supersede Jurisdiction

Jurisdiction over this matter was divested to federal court on April 5, 2025, upon proper notice of removal. All state court proceedings thereafter — including any initiated by KP or Deutsche Bank — are constitutionally void and structurally preempted.

The SDNY proceedings now pending involve identical facts, parties, and fraud claims. Those complaints allege a pattern of racketeering, assignment fraud, and judicial obstruction — all traceable to the very litigation posture now before this Court.

B. Retaliation Against a Whistleblower

Plaintiff’s actions in scheduling a sanctions hearing against Defendant — while knowingly named in ongoing federal litigation — constitutes retaliation against a federal whistleblower.

The motion now set for hearing seeks to declare the whistleblower a “vexatious litigant,” despite unrebutted federal jurisdiction, and protected filings in federal court.

C. Improper Participation by Conflicted Counsel

John Cunill, Esq. and the Law Offices of Adorno & Cunill are named parties in all three SDNY cases and are barred from continuing to prosecute or participate in this case.

Mr. Cunill has knowingly continued to file motions, schedule hearings, and

represent KP Investments in direct violation of:

Florida Rule of Judicial Administration 2.330 (e) and (f)

Rules of Professional Conduct

Federal whistleblower protections

D. Foundational Fraud Remains Unresolved

This ejectment case is a derivative proceeding based entirely on a void judgment obtained through fraud upon the court, and challenged via:

Rule 1.540(d) Motion before Judge Enriquez (pending)

Rule 60(d)(3) Motion before the Eleventh Circuit (pending)

Federal Collateral Attack in SDNY (pending)

Until those foundational motions are fully adjudicated, this case lacks legal standing to proceed.

E. Pattern of Judicial Misrepresentation

Mr. Cunill has repeatedly misrepresented the procedural posture and factual history of this case, while suppressing the Court's jurisdictional awareness. His filings routinely ignore the effect of federal removal, misstate the nature of pending disqualification motions, and falsely characterize the Defendant's filings as "abusive" or "irrelevant."

This misconduct has been extensively documented in Defendant's Rule 60(d)(3) Motion for Relief from Judgment Based on Fraud Upon the Court, now pending before the Eleventh Circuit Court of Appeals, which includes evidence that this and all state and federal Courts were knowingly manipulated through a pattern of calculated fraud and deliberate forum abuse.

Until those Rule 60(d)(3) proceedings are resolved, the judgment underlying this case remains contested and jurisdictionally void.

F. Public Oversight and Investigative Review

All dockets relating to this proceeding — including records of improper filings by conflicted counsel and inconsistent judicial rulings — have been submitted to congressional oversight committees, judicial watchdog organizations, and national journalists. This docket, together with all related dockets, forms a live public archive that has been published to prevent continued retaliation against whistleblower-protected activity and to expose systemic manipulation of judicial processes through fraud. The archive further documents the refusal of disqualified judges to honor the foundational rules that bar their participation.

Continued reliance by this Court on the representations of John Cunill, or any attorney currently named as a federal defendant will be preserved in the record as part of an evidentiary chain submitted for public oversight, federal audit, and referral.

This Court is now on notice that its docket is being independently reviewed. Any further rulings made while ignoring divestiture, disqualification, or retaliation claims will be construed as potential judicial misconduct and institutional complicity in an ongoing pattern of fraud and rights violations.

III. CLOSING STATEMENT: THE FRAUD AND TITLE DECEPTION NARRATIVE

The following excerpt is drawn from Defendant's previously filed judicial reply and is restated here to preserve the integrity of the record and underscore the foundational fraud underpinning this case:

The Fraud and Title Deception Narrative

"The deed Plaintiff relies on in this case, is the very one Defendant challenges. Plaintiff's exhibits reflects a Special Magistrate deed "for Mario Mirabal" recorded on November 25, 2024 for \$10, tied to the earlier specific-performance case. That instrument is the subject of Defendant's fraudulent-conveyance challenge across state, bankruptcy, and federal filings.

Plaintiff, as part of the fraud perpetuated upon both Mr. Mirabal and the

courts of this state and the United States, now asks the Court to believe that Mr. Mirabal — the legitimate homestead owner and party to a \$1.3 million contract with Carlos Perez / KP Investments — somehow conveyed his property for \$10. This is despite the existence of a settlement agreement between Mr. Mirabal and Deutsche Bank, in which Deutsche Bank accepted a \$590,000 payoff in full resolution of the foreclosure dispute, prior to Mirabal learning that the assignment relied upon by Deutsche Bank was fraudulent.

That assignment was forged by the now-disbarred David J. Stern law office, purporting to transfer the note and mortgage from IndyMac Bank to Deutsche Bank in 2010—more than two years after IndyMac ceased to exist. The transfer directly violated the Pooling and Servicing Agreement (PSA) governing the IndyMac INDX 2007-AR5 trust, in which Deutsche Bank served only as trustee, with no authority to foreclose or retain recoveries. All obligations were already satisfied through FDIC resolution in 2008.

In essence, Plaintiff asks this Court to believe that Mr. Mirabal—who had contracted to sell the property for \$1.3 million, and had settled the underlying loan for \$590,000—voluntarily transferred a \$2 million homestead for \$10. Even setting aside the forged assignment, Plaintiff's position suggests Mr. Mirabal relinquished over \$700,000 in equity without cause or compensation.

Plaintiff falsely represents Mr. Mirabal as a mere occupant of “KP's property,” when in fact KP never held lawful title. The deed was recorded amid active state and federal proceedings, including after Deutsche Bank's foreclosure had been dismissed with prejudice by Judge Bokor in 2020, a ruling Deutsche Bank never disclosed when KP pursued specific performance, in organized collusion to defraud Mr. Mirabal and the courts".

Every single representation made by attorney John Cunill in these proceedings has, in fact, constituted a knowing fraud upon the court.

Defendant Mario Mirabal is not a vexatious litigant. He is a Florida resident and U.S. citizen who has exercised his lawful right to defend his homestead against a fraudulent conveyance — one executed under color of law, and backed by actors now facing federal civil prosecution in three open SDNY cases.

From 2008 through 2024, Mr. Mirabal was continuously represented by licensed counsel. It was only after the sudden illness and passing of that attorney that Mr. Mirabal was forced to proceed pro se. Since that time, he has acted with diligence and restraint, submitting carefully documented pleadings and raising meritorious objections based on unrebutted evidence of systemic mortgage assignment fraud.

To now label him “vexatious” is a retaliatory misuse of judicial process. Mr. Mirabal has not only exposed an unlawful deprivation of his homestead, but also uncovered a pervasive, ongoing fraud affecting homeowners across this state — perpetrated by officers of the court who have abandoned their oath to uphold the Constitution.

Mr. Mirabal has the right — both as a litigant and as a whistleblower — to resist slander, to document fraud, and to pursue all lawful remedies, judicial and public, to hold these actors accountable.

Defendant reiterates that no further proceedings may lawfully continue while this Court knowingly relies on fraudulent instruments, disqualified counsel, and misrepresented title. This statement is preserved as a closing record declaration of the fraud, suppression, and federal conflict surrounding this

case.

IV. RELIEF REQUESTED

WHEREFORE, Defendant respectfully moves this Court to:

Stay all proceedings in this case, including the October 14, 2025 hearing on Plaintiff's Motion to Declare Defendant a Vexatious Litigant;

Strike the appearance of John Cunill, Esq., the Law Offices of Adorno & Cunill, and Beth Norrow, Esq. from this record based on active conflicts of interest and federal disqualification;

Declare that no further action may proceed in this case until:

The pending All Writs Petition before the Florida Supreme Court (SC2025-1325) is resolved;

The federal SDNY cases reach disposition (Case Nos. 1:25-cv-07418, 07419, 07423);

The pending 1.540(b) and 1.540(d) motions before Judge Enriquez are adjudicated;

Acknowledge that jurisdiction was divested as of April 5, 2025, and that any

further action constitutes judicial overreach, prejudicial abuse, and potential obstruction of federal oversight.

Enter any additional relief this Court deems just and proper to protect constitutional rights, prevent fraud upon the court, and preserve the separation of state and federal jurisdiction.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W. 49th Street

Miami Beach, FL 33140

Email: solphax@gmail.com